LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 28 1964
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1964

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, *Petitioner,*

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR PETITIONER

JOSEPH FORER
DAVID REIN
FORER & REIN
711 14th Street, N. W.
Washington 5, D. C.
Attorneys for Petitioner

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Statute Involved	2
Questions Presented	2
Statement of the Case	3
Summary of Argument	16
Argument	24
I. The Board and the court below misconstrued and misapplied the aid component of the section 3(4) definition of a Communist-front organization	24
A. The findings of the Board and the court below show that the American Committee's operation consists of peaceful activities to protect the interests of the foreign born	25
B. The Board construed the aid component to make it depend on the organization's subjective motivation, regardless of the nature of its activities	28
C. The court below construed the aid component to be present whenever an organization under Communist Party control engages in activities which can favorably impress the public	34
D. The aid component, properly construed, requires a showing that the organization's activities aid the insurrectionary objectives attributed to the Communist Party by section 2 of the Act	37
II. The Board and the court below misconstrued and unconstitutionally applied the Act by imposing liability on the American Committee for matters found concerning other organizations (the Area Committees) with which it cooperated but which it did not control	50

Page

A. The American Committee was held liable for matters found against the Area Committees despite the absence of evidence or finding that it controlled the latter groups 50

B. The imposition of this vicarious liability was an unconstitutional application of the Act .. 53

C. The Board's construction is not supported by the language of section 3(2) 56

III. The Board and the court below otherwise misapplied the Act and relied on irrelevant considerations and incompetent evidence to an extent which denied the American Committee both a fair hearing and an adequate judicial review ... 57

A. The Board's conclusion as to the American Committee's "purpose" otherwise rests on irrelevant and incompetent evidence and misapplications of the Act 58

1. Defense work beyond normal purposes ... 58

(a) The Estes and Green cases 59

(b) The Eisler case 61

2. Incompetent conclusory testimony of Lautner 64

3. Incompetent opinion testimony 67

4. Hearsay 69

5. Praise from the Communist Party 71

6. Non-deviation 73

a. Misuse of non-deviation as a test of the aid component 73

b. The evidence of non-deviation 74

(i) Eisler 74

(ii) The Smith Act 74

(iii) More asides 77

(iv) Criticism of the government 77

(v) Defense of Communist aliens 79

7. The reservoir conclusion 80

Page

B. The conclusion of the Board on the control component and the affirmance thereof by the court below otherwise rest on irrelevant and incompetent evidence and misapplication of the Act 83

1. Misapplication of section 13(f)(1) 84

2. The evidentiary findings as to Green 87

3. The evidentiary findings as to Harriet Barron and Dorothy Strange 90

4. The Board's misapplication of section 13(f)(2) 91

5. The court's reliance on improper considerations 93

6. The absence of meaningful evidence of control 96

C. Reliance on the testimony of Lautner was erroneous because of the curtailment of his cross-examination 98

IV. The provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face and as applied ... 102

A. The Act and the Board's order violate the First Amendment because they restrain rights of association, speech, press and petition without justification 102

1. The clear and present danger test applies and is not satisfied 102

2. If the balancing test applies, it is not satisfied 106

B. The Act and the Board's order violate the First Amendment and due process because the control component, as construed by the Board and the court below, is vague 108

Page

C. The Act and the Board's order violate due process because the Area Committee was bound by the Board's finding, made in the proceeding against the Communist Party, that the Communist Party is a Communist-action organization 110

D. The Act is invalid because it conflicts with the privilege against self-incrimination 112

Conclusion 113

Appendix—Statute Involved 1a

CASES CITED

Alford v. United States, 282 U. S. 687 .....99, 100, 101
American Committee v. S. A. C. B., 331 F. 2d 53 1
American Communications Assoc. v. Douds, 339 U. S. 382 104
Aptheker v. Secretary of State, 378 U. S. 500 .....5, 47, 55
Baggett v. Bullitt, 377 U. S. 360 .....40, 108, 109
Baker v. Carr, 369 U. S. 186 111
Barber v. Gonzales, 347 U. S. 637 10
Barton v. Sentner, 355 U. S. 2 10
Bates v. Little Rock, 361 U. S. 516 .....55, 103, 104, 106
Bonetti v. Rogers, 356 U. S. 691 10
Boyd v. United States, 116 U. S. 616 112
Bridges v. United States, 199 F. 2d 811, rev'd 346 U. S. 209 88
Brotherhood of Railroad Trainmen v. Virginia, 377 U. S. 1 103
Burlington Truck Lines v. United States, 371 U. S. 156 33
Carlson v. Landon, 342 U. S. 524 .....9, 11, 76, 95
Chastleton Corp. v. Sinclair, 246 U. S. 543 111
Chaunt v. United States, 364 U. S. 350 10
Chew v. Colding, 344 U. S. 590 10
Cole v. Arkansas, 333 U. S. 196 .....56, 110
Colorado-Wyoming Gas Co. v. F. P. C., 324 U. S. 626 .. 33
Communist Party v. S.A.C.B., 367 U. S. 1 ..4, 22, 24, 44, 73, 80, 96, 101, 103, 105, 106, 107, 111, 112

Page

Communist Party v. United States, 331 F. 2d 897, cert. den. sub nom. United States v. Communist Party, 377 U. S. 968 112
Cramp v. Bd. of Public Instruction, 368 U. S. 278 ..... 45, 108, 109
DeJonge v. Oregon, 299 U. S. 353 107
Dennis v. United States, 341 U. S. 494 ..... 75, 104
Eisler v. United States, 353 U. S. 857; 338 U. S. 189; 338 U. S. 883 62
Estes v. Potter, 183 F. 2d 865 60
Flemming v. Nestor, 363 U. S. 603 10
Galvan v. Press, 347 U. S. 522 .....
Gastelum-Quinones v. Kennedy, 374 U. S. 469 10
Grant Food Stores v. Fine, 269 F. 2d 542 67
Harisiades v. Shaughnessy, 343 U. S. 580 ..... 9, 11, 40, 76, 95
Heikkila v. Barber, 345 U. S. 229 10
Heikkinen v. United States, 355 U. S. 273 10
Hyun v. Landon, 350 U. S. 990 10
Jay v. Boyd, 351 U. S. 345 ..... 10, 11
Jenkins v. United States, 307 F. 2d 637 68
Kimm v. Rosenberg, 363 U. S. 405 10
Kirby v. United States, 174 U. S. 47 110
Maisenberg v. United States, 356 U. S. 670 10
Mesarosh v. United States, 352 U. S. 1 101
N.A.A.C.P. v. Alabama, 357 U. S. 449 ..... 103, 104, 106
N.A.A.C.P. v. Button, 371 U. S. 415 ..... 55, 103
National Council of American-Soviet Friendship v. S.A.C.B., 322 F. 2d 375 ..... 47, 85
Niukkanen v. McAlexander, 362 U. S. 390 10
Noto v. United States, 367 U. S. 290 ..... 75, 110
Nowak v. United States, 356 U. S. 660 10
Renaud v. Abbott, 116 U. S. 277 ..... 56, 110
Rowoldt v. Perfetto, 355 U. S. 115 ..... 10, 11, 40
Scales v. United States, 367 U. S. 203 ..... 75, 107
Schneiderman v. United States, 320 U. S. 118 40
S. E. C. v. Chenery Corp., 318 U. S. 80 ..... 33, 37
S. E. C. v. Chenery Corp., 332 U. S 194 ..... 33, 37
Shelton v. Tucker, 364 U. S. 479 55
Simmons v. United States, 206 F. 2d 427 68
Talley v. California, 362 U. S. 60 108
Thomas v. Collins, 323 U. S. 516 ..... 103, 104, 105
United States v. Carolene Products Co., 304 U. S. 144 .. 111

Page

United States ex rel. Doyle v. District Director, 169 F. 2d 753 63
United States v. Spaulding, 293 U. S. 498 68
United States v. Spector, 343 U. S. 169 ..... 10, 95
United States v. Witkovich, 353 U. S. 194 10
Wieman v. Updegraff, 344 U. S. 183 55
Wesson v. United States, 164 F. 2d 50 68
Yates v. United States, 354 U. S. 298 75

STATUTES

Subversive Activities Control Act of 1950, 64 Stat. 987, 50 U. S. C. 781 *ff.* 2, 1a

Sec. 2 ..... 17, 32, 37, 38, 48
Sec. 2(6) 47
Sec. 2(7) 46, 47
Sec. 2(15) 27
Sec. 3(2) 15, 19, 20, 51, 52, 53, 56
Sec. 3(3) 15, 44, 45, 49, 57, 73, 110
Sec. 3(4) 4, 18, 23, 24, 38, 44, 46, 49, 57, 108, 110
Sec. 3(4A) 49
Sec. 5(a) 5
Sec. 6 5
Sec. 7 ..... 56, 57
Sec. 7(b) 4, 14, 102
Sec. 7(c) 4, 102
Sec. 7(e) 4
Sec. 9(b) 4, 102
Sec. 10 5
Sec. 11 5
Sec. 13 3
Sec. 13(e) 73
Sec. 13(f) 18, 21, 48, 73, 84, 86, 91, 92, 93
Sec. 13A, 50 U. S. C. 792a 3
Sec. 13A(f) 33, 46
Sec. 14(a) 2, 6, 14
Sec. 14(b) 5
Sec. 15 6
Sec. 16 33

	Page
Sec. 10, Communist Control Act of 1954, 50 U. S. C. 792a	3
Sec. 8(b), Administrative Procedure Act, 5 U. S. C. 1007(b)	33
Alien Registration Act of 1940, 54 Stat. 670	75
8 U. S. C. 1251(a)(6)(D)	5
8 U. S. C. 1451(c)	5
20 U. S. C. 581(f)	5
28 U. S. C. 1254	2
42 U. S. C. 410(a)(17)	5
42 U. S. C. 1874(d)(2)	5
Immigration and Nationality Act	94
Internal Security Act of 1950	94
Art. 5, Geneva Convention on Prisoners of War, 47 Stat. 2030	62
H. R. 9490, 81st Cong., 2d Sess.	45
H. Rep. 2980, 81st Cong., 2d Sess.	45
96 Cong. Rec.	80
110 Cong. Rec.	111
McCormick, Evidence (1954)	67, 68
Chafee, The Blessings of Liberty (1956)	41
Webster's Third International Dictionary (1961)	48
Shakespeare, The Winter's Tale	48
Wash. Eve. Star, Sept. 3, 1964	111
Wash. Daily News, Aug. 18, 1964	43
Supreme Court Rule 21(3)	1

Supreme Court of the United States

OCTOBER TERM, 1964

No. 44

AMERICAN COMMITTEE FOR PROTECTION OF FOREIGN BORN, *Petitioner,*

v.

SUBVERSIVE ACTIVITIES CONTROL BOARD

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR PETITIONER

OPINION BELOW

The opinion below (R. 71-90)[1] is reported in 331 F. 2d 53.

---

[1] "R." refers to the printed record. "Tr." refers to the original transcript, which has been filed with the Court pursuant to Rule 21(3). "P. Ex." refers to an exhibit introduced in the administrative proceeding by the Attorney General, there the petitioner. "R. Ex." refers to an exhibit introduced by the present petitioner, the respondent in the administrative proceeding.

JURISDICTION

The judgment below is dated and was entered on December 17, 1963 (R. 91). The petition for certiorari was filed on March 12, 1964, and was granted on April 27, 1964 (R. 181). The Court has jurisdiction under section 14(a) of the Subversive Activities Control Act of 1950, as amended,[2] 64 Stat. 1001, 68 Stat. 780, 72 Stat. 950, 50 U.S.C. 793, and 28 U.S.C. 1254.

STATUTE INVOLVED

Pertinent provisions of the Act are set forth in the Appendix to this Brief.

QUESTIONS PRESENTED

1. Whether the provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face or as applied in this case.

2. Whether an organization satisfies the Act's requirement that a Communist-front organization be "primarily operated for the purpose of giving aid and support to a Communist-action organization" (i.e., the Communist Party) by reason of engaging in peaceable activities for the forwarding of innocent objectives—specifically, in this case, defending by litigation and other lawful means the rights of any foreign born who seek its help.

3. Whether an organization accused of being a Communist-front organization may be conclusively bound by a Board finding, made in an earlier proceeding to

---

[2] The Subversive Activities Control Act is Title I of the Internal Security Act of 1950, 64 Stat. 987, and as amended is hereafter referred to as the Act. The petitioner herein is hereafter referred to as the American Committee. The Subversive Activities Control Board, the respondent herein, is hereafter called the Board.

which the accused organization was not a party, that the Communist Party is a Communist-action organization.

4. Whether the court below accorded a fair and adequate review of the findings and conclusions of the Board.

5. Whether the evidence supports the order of the Board.

6. Whether the Board erroneously curtailed cross-examination of a key witness for the Attorney General.

7. Whether an organization may be found to be a Communist-front organization on the basis of evidence and findings concerning other organizations with which it cooperates but which it does not control.

8. Whether the order of the Board and its affirmance below rest on irrelevant considerations and incompetent evidence.

STATEMENT OF THE CASE

The decision of the court below (R. 71-91) affirmed, Chief Judge Bazelon dissenting, an order of the Board (R. 70) that the American Committee register as a Communist-front organization pursuant to the Act.

The Act

Section 13 of the Act provides for administrative proceedings before the Board, instituted by petitions of the Attorney General, to determine whether accused organizations shall be ordered to register as "Communist-action" or "Communist-front" organizations.[3]

[3] The Act also authorizes the Board to declare whether organizations are "Communist-infiltrated" organizations. Such organizations are deprived of the benefits of the National Labor Relations Act, but are not required to register. Sec. 13A, added by sec. 10 of the Communist Control Act of 1954, 50 U.S.C. 792a.

On April 20, 1953, in the first case brought under the Act, the Board ordered the Communist Party of the United States of America to register as a Communist-action organization (R. 16). That order was eventually sustained in *Communist Party* v. *S.A.C.B.*, 367 U.S. 1 (four Justices dissenting).

A Communist-front organization is defined by section 3(4) of the Act as one "which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title."[4]

A Communist-front organization is required to register as such with the Attorney General (sec. 7(b)). It must also file with the Attorney General a registration statement showing the names and addresses of its officers, an accounting for the preceding twelve months of all moneys received and expended, including the sources from which received and the purposes for which expended, and a listing of all printing and duplicating facilities possessed, owned or controlled by the organization, its officers and members (sec. 7(c)). Annual reports must be filed to keep the registration statement current (sec. 7(e)). The registration, registration statements and annual reports must be kept open for public inspection (sec. 9(b)).

---

[4] The references in section 3(4) to a Communist foreign government and the world Communist movement are not applicable here, since the American Committee was found to be controlled by, and primarily operated for the purpose of giving aid to, the Communist Party, "a Communist-action organization" (R. 66).

The organization must label any publication which it distributes through the mail or interstate or foreign commerce with the legend, appearing on both the publication and the outside envelope or wrapper, "Disseminated by ....., a Communist organization." Its radio and television broadcasts must be announced as sponsored by a Communist organization. (Sec. 10.) Contributions to the organization are not tax deductible, and the organization itself is denied tax exemption (sec. 11). Service in the employ of the organization is not considered employment for social security purposes (42 U.S.C. 410(a)(17)). Employees of the government or of any privately owned "defense facility" may not contribute funds or services to the organization (sec. 5(a)(2)).

Members of the organization may not hold employment with the federal government or any labor organization, and must disclose their membership when seeking employment in any defense facility (sec. 5(a)). They may not apply for fellowships or loans under the National Defense Education Act (20 U.S.C. 581(f)) or for National Science Foundation scholarships or fellowships (42 U.S.C. 1874(d)(2)). If aliens, they may not be naturalized and are subject to deportation (8 U.S.C. 1251(a)(6)(D)). If recently naturalized, they are prima facie liable to denaturalization (8 U.S.C. 1451(c)).[5]

These consequences apply when the order becomes final by virtue of the exhaustion of judicial review (sec. 14(b)). The Act imposes severe criminal penalties for failure to register after a registration

[5] Section 6 of the Act, prohibiting members from using or applying for passports, was held unconstitutional in *Aptheker* v. *Secretary of State*, 378 U.S. 500.

order has become final and for violation of the Act's sanctions on the organization and its members (sec. 15).

Board findings must be supported by a preponderance of the evidence (sec. 14(a)).

The American Committee

The American Committee, an unincorporated association, was formed in November 1933 by the American Civil Liberties Union and several labor union locals (P. Ex. 242). Its purpose, as stated in its constitution, is to promote the interests of the foreign-born in the United States "regardless of race, color, nationality, creed, or place of birth" (R. 41).

The American Committee's governing authority is its Annual Conference (R. Ex. 88; R. 55-56, 172). Notice of the Annual Conference is given by sending thousands of calls to organizations and individuals who may be interested in attending. Anyone may attend the Conference either as an individual or as a delegate of an organization. Upon registering and paying a registration fee of one or two dollars, he may participate fully in the Conference's deliberations and actions, including the election of the American Committee's officers and the adoption of its policies and programs. The Conferences have been attended by as many as 300 to 400 people, including delegates from various organizations (nationality, trade union, church, civil liberties, and women's groups, etc.). (R. 55, 174; Tr. 4874-81, 4136-41, 4600-01.)

Between Annual Conferences, the executive secretary is responsible for the work and activities of the American Committee (R. Ex. 88). Abner Green joined

the American Committee's staff in 1936, became executive secretary in 1941, and held that position continuously thereafter. During his tenure as executive secretary, Green was the leading figure in the operation of the American Committee and its affairs.[6] (R. 28.)

The American Committee is a national organization with an office in New York City (R. 20, 21, 64). There grew up, however, and existed at the time of the administrative proceeding, various local groups, which we here call Area Committees, each of which was styled "Committee for Protection of Foreign Born," preceded by a geographical designation, such as "Los Angeles" or "New England" (R. 21).

The Area Committees sometimes referred to themselves as chapters, branches or affiliates of the American Committee, and the American Committee sometimes referred to the Area Committees in similar terms. Simultaneously, the American Committee would state that the Area Committees were not its branches or affiliates. (R. 22-27; Tr. 5184).

Disregarding nomenclature, the evidence is uncontradicted as to the relationship between the American Committee and the Area Committees. The American Committee encouraged the formation of Area Committees and took the initiative in getting some of them organized (Tr. 5296-97, 5138, 5143-46). Other Area Committees were organized without the American Committee's participation and sometimes without its knowledge (Tr. 5172-74, 5225-26, 5230, 5261-62, 5274-75). Generally, formation of Area Committees was an

[6] Mr. Green died on September 9, 1959.

outgrowth of the initiation of deportation cases in the area which aroused local concern or indignation (Tr. 4132, 5292-96). The Area Committees work along lines and have policies similar to those of the American Committee. The Area Committees and the American Committee exchange literature and otherwise cooperate. The American Committee, however, neither has nor exercises authority or control over the Area Committees. They elect their own officers, decide their own policies, methods and activities, raise and spend their own funds as they see fit—all without intervention or direction of the American Committee. Thus each Area Committee is completely its own master and independent of any other Area Committee and of the American Committee. (Tr. 4132-36, 4433, 4494, 5121-22, 5127, 5130-43, 5805-07; R. 23, 26.)

Throughout its history the American Committee has engaged in a vast variety and scope of activities relating to almost every conceivable issue involving the interests of the foreign born, and it has issued a tremendous volume of literature, of which the record contains a sampling. Its work in the foreign-born field includes educational and cultural projects and material, legislative work, mounting public campaigns on legislation and matters of interest to the foreign born, technical assistance to applicants for naturalization, legal defense work, etc.[1]

The American Committee has always opposed the deportation of resident aliens and the denaturalization

[1] See R. 53-55 and the numerous issues of the American Committee's publication, *The Lamp*, of proceedings of its Annual Conferences, and of its other publications, introduced as exhibits by both sides. See also Tr. 5598-5603, 5676-77, 5683-5959, 5983-6058, 6088-98, 6113-16, 6180-97, 4102, 4057, 4956-62, 5376.

of naturalized citizens, no matter what the basis for the action (Tr. 5960-63, 4909-10, 4926-27, 5957). Thus in 1942 it opposed both denaturalization actions against members of the German-American Bund and other Nazi or Fascist sympathizers and the denaturalization action against William Scheiderman, a leading Communist (Tr. 5325-28).

The American Committee's defense work consists of litigating or otherwise intervening in behalf of specific aliens or naturalized citizens involved in problems connected with their foreign origin. This defense work has included assistance to aliens being refused naturalization on various grounds, to aliens facing deportation charges, and to naturalized citizens facing denaturalization actions. (R. 20, 53, 57, 78; A.G. Ex. 259, pp. 7-10; Tr. 5927-29, 5974-83, 6014-15, 6057-80, 6053-54.) Defense work also includes the issuance of literature on the cases appealing to the public to protest the deportation or denaturalization action and to contribute funds for the defense effort (R. 20, 53-54, 57-58, 60; R. Ex. 97, 174, 232; P. Ex. 2, 18).

The American Committee is publicly committed, and has never refused, to assist any individual who seeks its help in a deportation or denaturalization case, no matter what the charge involved (Tr. 4142-44, 5488-90; R. 79). If desired, and if the case is defensible, the American Committee supplies counsel and handles the litigation in the administrative and judicial proceedings, sometimes through this Court and often successfully (Tr. 4142-44, 5212-13, 5488-90; R. 58, 78).[8]

---

[8] Among cases litigated in this Court by the American Committee or an Area Committee or both in conjunction are *Harisiades* v. *Shaughnessy*, 342 U.S. 580; *Carlson* v. *Landon*, 342 U.S. 524;

All defense work is done at the expense of the American Committee and without cost to the individual being assisted. No conditions of any kind are imposed on the assistance, nor is the alien or his family ever questioned about his political views or affiliations or subjected to indoctrination. (Tr. 4571-72, 4581-83, 5488-90.)

From its inception, the American Committee defended deportation cases involving charges that the alien was or had been a member of the Communist Party (Tr. 5446, 5466-68, 4801). The first American Committee case that Abner Green heard about, in 1935, was its defense of a Jewish refugee whom the Immigration Service was seeking to deport to Nazi Germany and sure death, on a charge that he had been a Communist in Germany (Tr. 4805-06). As the Board (R. 57) and the court below (R. 78) found, the American Committee also has defended numerous non-Communists in deportation cases not involving charges of Communism or other political grounds. Abner Green, the one person in a position to know, testified that over a twenty-year period the American Committee defended 3,000 to 4,000 deportation cases, of which about 350 to 400 involved charges of past or present Communist Party membership or affiliation (Tr. 6112-13, 6122). The Board estimated, but without

United States v. *Spector*, 343 U.S. 169; *Chew* v. *Colding*, 344 U.S. 590; *Heikkila* v. *Barber*, 345 U.S. 229; *Barber* v. *Gonzales*, 347 U.S. 637; *Hyun* v. *Landon*, 350 U.S. 990; *Jay* v. *Boyd*, 351 U.S. 345; *United States* v. *Witkovich*, 353 U.S. 194; *Barton* v. *Sentner*, 355 U.S. 2; *Rowoldt* v. *Perfetto*, 355 U.S. 115; *Heikkinen* v. *United States*, 355 U.S. 273; *Nowak* v. *United States*, 356 U.S. 660; *Maisenberg* v. *United States*, 356 U.S. 670; *Bonetti* v. *Rogers*, 356 U.S. 691; *Niukkanen* v. *McAlexander*, 362 U.S. 390; *Kimm* v. *Rosenberg*, 363 U.S. 405; *Flemming* v. *Nestor*, 363 U.S. 603; *Chaunt* v. *United States*, 364 U.S. 350; *Gastelum-Quinones* v. *Kennedy*, 374 U.S. 469.

any evidentiary basis, that the latter type of cases were "at least in excess of fifty percent" (R. 58 ftn.).

Prior to 1946, deportation cases charging past or present Communist Party membership were few and occasional (Tr. 5396-97). But beginning in 1946, with the onset of the cold war, the Department of Justice instituted such cases in large quantity, most alleging Party membership of short duration in the '30's (Tr. 5397-99, 5454-55, 5969, 6116). The Department's drive was not restricted to security risks. It extended to aliens proceeded against on flimsy evidence; to aliens long resident in the United States whose Party membership, if any, had been nominal and many years past; to aliens whose expulsion would destroy long-established American families. It was marked by highly questionable and oppressive procedures. (E.g., P. Ex. 17, 23, 47, 51, 166; R. Ex. 191, 173; Tr. 5412-27. See also *Rowoldt* v. *Perfetto,* 355 U.S. 115; the description of the aliens involved in *Harisiades* v. *Shaughnessy,* 342 U.S. 580, 581-83; *Carlson* v. *Landon,* 342 U.S. 524; *Jay* v. *Boyd,* 351 U.S. 345.)

The aliens and their families facing the Department's political deportation drive were generally poor, and in the prevailing climate the nature of the charge increased their difficulty in obtaining help. It was natural for them to come to the American Committee, which was expert in the deportation field and publicly committed to helping any alien who sought its help, or to the Area Committees which operated on like principles. (Tr. 4145-46, 5464-65.) For example, when Charlie Soldo, a retired West Virginia coal miner, was arrested on a political deportation charge, his regular lawyer refused to represent him out of fear that it would hurt his (the lawyer's) reputation. It was then

that the desperate Soldo family obtained help from the Western Pennsylvania Committee for Protection of Foreign Born, which provided Soldo a lawyer without cost to him. The case was eventually won before the Board of Immigration Appeals because of the insufficiency of the evidence. (Tr. 6295-96, 6299-6300, 6311.)

Bennie Saltzman, husband of an American citizen, father of a son killed in the Battle of the Bulge and of another wounded in the same battle, joined the Communist Party for a short time in the 1930's because the Party was leading the fight against corruption in his union. (Tr. 4549-50, 4954-56.) When Saltzman applied for naturalization, he told the authorities of his past Party membership (Tr. 4557). In 1948 he was arrested without warning on deportation charges and jailed on Ellis Island (Tr. 4560-61). The American Committee furnished counsel, defended him and gave much-needed moral support to the distraught family (Tr. 4566-67, 4570, 4581-83). It did not attempt to win him or his family to Communism, nor did it cause them to harbor ill will toward the United States (Tr. 4571-72, 4614). Mrs. Saltzman testified (Tr. 4661): ". . . they [the American Committee and its General Counsel, Carol King] made me feel that I have friends; that I have friends to help me, and thus [that's] why I have so much faith and so much faith in the American Committee for the Protection of Foreign Born."

The American Committee finances its activities by appeals to the public for funds and by sales of its literature (Tr. 4252-53, 6230-32; R. 55). Its financial records are audited annually, and the audit summary is published each year in the organization's periodical, *The Lamp* (Tr. 4141-42, 6233; R. Ex. 241, p. 4).

Prior to the cold war, the American Committee's relations with the government, including the Department of Justice, were often amicable. The American Committee and the Immigration Service cooperated in projects of common interest (Tr. 5379-92; R. Ex. 212, 238, 239; R. 62). High government officials, including the Commissioner of Immigration and Naturalization, spoke at the organization's conferences and other affairs (R. 62; R. Ex. 187, pp. 3-4; Tr. 5663-64, 5672, 5316-18, 5332, 5372; P. Ex. 165, 258, p. 20; R. Ex. 133, 135, 156, 170). The Department of Justice supplied without charge radio time for a broadcast (R. 62; Tr. 5621-25), and the Office of War Information broadcast a program by the American Committee (R. 62; Tr. 6227-29; R. Ex. 240). President Roosevelt, General Eisenhower, Attorneys General, other cabinet officers, Senators and Representatives sent messages to the organization's affairs (R. Ex. 135, 38, 39, 133, 160, 162, 169, 167, 168; P. Ex. 165, 259, 160, 162, 163; R. 62; Tr. 5315, 5336, 5340, 5675-76).

These governmental manifestations of friendliness abounded in the proceedings of the 1945 Annual Conference of the American Committee (P. Ex. 259). The Annual Conference was not held in 1946 (Tr. 5387).

The next Annual Conference convened in October 1947 (P. Ex. 245). The American Committee's policies and positions were identical with what they had been before (Tr. 5400). Abner Green, the executive secretary, had held that post since 1941. But the cold war was under way, and the anti-Communist deportation drive was in full swing. No government officials spoke or sent messages (P. Ex. 245). A year or two later, the Attorney General included the American Committee on his so-called list of subversive organiza-

tions, without the formality of a hearing (Tr. 5082-83, 5086-88, 6901-02).[9]

The Proceeding

On April 22, 1953, the Attorney General instituted this proceeding by filing a petition with the Board for an order requiring the American Committee to register as a Communist-front organization under section 7(b) of the Act (Tr. 7510). On August 28, 1953, the Attorney General filed an amended petition (R. 2), which the American Committee answered (R. 8). On June 27, 1960, the Board issued its registration order against the American Committee (R. 70) and a Report (R. 14-69) containing its findings and conclusions. The American Committee filed a petition for review in the court below under section 14(a) of the Act. On January 8, 1962, the court remanded the case to the Board for purposes no longer relevant. On March 8, 1962, the Board issued a Report on Reconsideration (R. 72).[10]

At the administrative hearing, most of the testimony introduced by the Attorney General related to some of the Area Committees and their supposed connections with the Communist Party. The American Committee did not seek to refute this testimony. Instead, it introduced evidence that the Area Committees were independent organizations which it did not control, and

---

[9] But eminent private individuals thereafter continued participation in petitioner's affairs or projects including Thomas Mann (Tr. 5470-71, 5507; R. Ex. 152), Bishop Arthur W. Moulton (Tr. 7001 ff.), Prof. Anton J. Carlson (Tr. 4388 ff.), Prof. Louise Pettibone Smith (Tr. 3961 ff.), and many others (Tr. 5595-96).

[10] Subsequent references herein to the Board's Report are to the original Report. For present purposes, the Report on Reconsideration is of no significance (R. 72).

contended that it could not be held liable for their actions. (R. 21; *supra*, pp. 7-8) The Board made no finding that the American Committee controls the Area Committees. It held, however, under its construction of section 3(2) of the Act, that the American Committee and the Area Committees constitute one organization for the purposes of the Act because they "are associated together for joint action on particular subjects" (R. 27). The Board thereafter, throughout its Report (R. 33-66), relied on evidence concerning the Area Committees. Thus the Report's Concluding Findings (R. 64-66) summarize as findings relating to the American Committee preceding evidentiary findings relating to both the American Committee and Area Committees.

The most damaging findings relating to the American Committee itself were based on testimony of the Attorney General's witness Lautner. This testimony and the findings are later described, as is the curtailing of Lautner's cross-examination (*infra*, pp. 98-101).

The Board concluded that the American Committee met the definition of a Communist-front organization on the ground that it "has been and is (i) substantially directed, dominated, or controlled by the Communist Party of the United States, a Communist-action organization as defined in section 3(3) of the Act, and (ii) primarily operated for the purpose of giving aid and support to such Communist-action organization" (R. 66). At the administrative hearing, no evidence had been introduced to establish that the Communist Party was a Communist-action organization. The Board held that the American Committee was bound in this respect by the Board's determination of April 20, 1953, made in the proceeding against the Party, to which the American Committee was not a party (R. 16).

The court below affirmed the order of the Board, per Judges Prettyman and Danaher, with Chief Judge Bazelon dissenting (R. 71-90).

SUMMARY OF ARGUMENT

I.

One of the two components of the Act's definition of a Communist-front organization is that it be "primarily operated for the purpose of giving aid and support to a Communist-action organization" (i.e., the Communist Party). Both the Board and the court below misconstrued and misapplied this aid component, and the Board's own evidentiary findings demonstrate that the aid component, properly construed, was not satisfied.

A. The findings of the Board and the court below show that the activities of the American Committee consist primarily of efforts to protect the interests of the foreign born, including defending all aliens who seek its help in deportation and denaturalization proceedings and advocating reforms in our immigration laws. There is no finding or evidence that the American Committee advocated or furthered insurrection or other illicit conduct, that it promoted Communist ideology, or assisted the Communist Party organizationally, as by recruiting members for it.

B. The Board applied the aid component to make it depend on the organization's subjective motivation, called "purpose," without regard to the nature of its activities. The Board found that the American Committee had the motivation ("purpose") of aiding and supporting the Communist Party, particularly by defending members of the Party in deportation and denaturalization cases.

C. The court below held that the American Committee aided the Communist Party in two ways. First, by defending alien members of the Party in deportation and denaturalization cases, the American Committee thereby helped the Party itself. Second, by engaging in the "laudable" activity of protecting the rights of any alien who sought its help, the American Committee improved the public image of, and thereby aided, the Communist Party. The Court's theory did not depend on an organization's motive, but on the combination of Communist Party control of an organization and the doing of good deeds by the latter.

The differences in the interpretation of the aid component between the Board and the court require a reversal under the doctrine that an administrative action must be judged solely on the grounds invoked by the agency.

D. The common factor in the application of the aid component by the Board and the court below was finding the component satisfied by innocent activities directed toward innocent objectives—in this case, the American Committee's work in behalf of the foreign-born and particularly its defense of aliens involved in deportation cases.

Properly construed, however, the aid component does not, and constitutionally cannot, comprehend innocent activities directed toward innocent objectives. Instead, the component refers to aiding the insurrectionary activities attributed to the Communist Party by section 2 of the Act. At most, it can be expanded only to include direct aid to the Party in its organizational operations, such as recruiting Party members.

1. To apply the Act against organizations which engage only in "laudable" activities, regardless of their

motivation, misuses a statute whose purported purpose is protection of the national security. It is offensive to persecute an organization under the Act for defending aliens in litigation. This application of the Act endangers the right of association in all cause organizations and magnifies the constitutional objections to the Act.

2. The sensible reading of "aid and support to a Communist-action organization" in section 3(4)(B) is aid to such an organization in the distinctive activities which characterize it as an action organization, all of which are baneful. As construed by this Court, the Act did not require even the Communist Party to register without a finding that it engaged in such harmful conduct. The Act is not harsher toward other organizations.

The legislative history confirms that Congress was not seeking to hit innocent activity, and was aware that legislation cannot and should not be directed against peaceable Communist activity.

The construction of the Board and the Court below eliminates the aid component of section 3(4). The first component of the section is Communist Party control. Any organization under such control would be operated to benefit the Communist Party in some way.

The construction below is also inconsistent with other provisions of the Act, including the severe sanctions levied on Communist-front organizations, the recited justification for the Communist-front provisions, and the criterion provided by section 13(f)(3) as a guide to ascertaining the existence of the aid component.

The word "purpose" in section 3(4)(B) does not, as the Board thought, make the aid component turn

solely on the subjective motivation of the organization. "Purpose" can have an objective meaning, and the Board's construction destroys the pattern of the Act's definitions of action, front and infiltrated organizations.

II.

The Board and the court below erred in holding the American Committee liable for matters found against the Area Committees.

A. The Board did not find that the Area Committees were constituent components of the American Committee, nor did it find that the Area Committees were controlled by the American Committee. All the evidence is to the contrary. The basis for the Board's holding was that the American Committee and the Area Committees cooperated, and thus, by the Board's view, were a single organization under the section 3(2) definition of "organization" as including "a group of persons . . . permanently or temporarily associated together for joint action on any subject or subjects."

B. This application of the Act represents an unprecedented extension of vicarious liability. The application violates due process by imposing liability and disabilities for conduct in which those held liable did not engage, of which they were not aware, and which cannot be imputed to them by any reasonable or conventional standards.

This application makes it dangerous for organizations to associate or cooperate with other organizations. The application violates the First Amendment by creating a serious encroachment on the rights of association which is not justified by a compelling governmental interest and which goes far beyond the necessi-

ties of any legitimate governmental purpose. The Board's construction also denies procedural due process to the Area Committees by imposing liability on them without a hearing.

C. The language of Section 3(2) does not compel the Board's construction. The purpose of the section was merely to reach informally organized groups, not to treat several distinct groups as one merely because they cooperate. The Board misread the language of the section, since the word "group" is singular, and "associated" modifies "persons."

The Board's theory makes registration impossible, since a registering organization does not have, and cannot obtain, the necessary information from organizations which it does not control. And since all Communist-front organizations are by definition associated with the Communist Party, the Board's theory makes superfluous the Act's provisions for separate proceedings against, and separate registrations by, Communist fronts.

III.

The Board and the court below committed numerous other prejudicial errors, to an extent which denied the American Committee both a fair hearing and an adequate judicial review.

A. Even if the Board was right in its interpretation of the aid component, it was wrong in concluding that the American Committee's "purpose" is to aid the Communist Party. An examination of all the subsidiary findings from which this conclusion was drawn shows that the Board relied on irrelevant matters, distortions of the evidence, and incompetent testimony. The Board misused the non-deviation test of section

13(f)(4), by employing it to determine the aid component, whereas it is relevant only to the control component. Moreover, the finding of non-deviation was not justified by the evidence. There is neither evidence nor evidentiary findings to support the Board's concluding finding that the American Committee had the secondary purpose of seeking to win good will to create a reservoir of supporters of the Communist Party.

B. The Board's finding that the American Committee is controlled by the Communist Party is also based on irrelevancies and misapplications of the Act. The Board misapplied section 13(f) (1) of the Act, by holding it was satisfied without any finding that any manager or director of the American Committee was, at the time of the administrative hearing, a representative of the Communist Party. All the Board found was that Abner Green had once been such a representative.

An examination of the Board's subsidiary findings shows that the Board was not justified in finding that Green was ever a representative of the Communist Party and that Green, Barron and Strange were members of the Communist Party. Nor does the evidence support the finding made under section 13(f)(2) that the Communist Party aided the American Committee.

The court below affirmed the Board's control finding on the basis of egregiously irrelevant and political considerations, including a mystifying view that it is "Communist doctrine" to maintain that the freedom of all is endangered by attacks on the freedom of Communists.

The Board cited no instance in which the American Committee received dictates from the Communist Party or adopted programs or policies for reasons other than

those arising from its own independent judgment. Thus there is lacking meaningful evidence of "control," as defined by this Court in the *Communist Party* case.

C. The Board and the court relied heavily on testimony of Lautner adverse to the American Committee. This was error, since the Board curtailed the cross-examination of Lautner by permitting him to withhold his place of residence and by excluding questioning designed to show that his reason was a pretext. Because of changed circumstances, this error cannot be rectified by remanding for further cross-examination. Hence all of Lautner's testimony must be stricken, in which event the Board's order clearly lacks evidentiary support.

IV.

The provisions of the Act relating to the registration of Communist-front organizations are unconstitutional on their face and as applied.

A. 1. The Act and the Board's order restrain rights of association, speech, press and petition, all protected by the First Amendment. In the *Communist Party* case, the Court applied the balancing test on the theory that the registration order against the Party was only an indirect or incidental restraint of First Amendment rights. Here the restraint is direct. An organization like the American Committee seeks reforms within the existing political structure rather than revolutionary changes. It cannot survive the destructive effects of a registration order. By destroying the organization, the order directly restrains association in it.

The order likewise directly restrains speech, press and petition because it conditions the continued exer-

cise of these rights on registration and because the finding was based on the American Committee's exercise of the rights.

Hence the clear and present danger test is applicable here. That test is not met, there being neither finding nor evidence of any dangerous advocacy or activity.

2. The Act and the Board's order also fail the balancing test, if that is applicable. That test requires that the restraint on First Amendment interests be outweighted by a compelling governmental interest, and that there be a substantial connection between the disclosure demanded and the purpose which the disclosure is asserted to serve. These standards are not satisfied in the case of an organization whose activities concededly consist of peaceable and laudable efforts to protect the interests of the foreign born.

B. By the construction of the Board and the court below, the aid component of section 3(4) includes any activity that may benefit the Communist Party no matter how collaterally or intangibly. This makes the Act's standard for imposing liability so vague and comprehensive as to violate both due process and the First Amendment.

C. The American Committee was held bound by the Board's determination, made in a prior proceeding against the Communist Party, that the latter organization was a Communist-action organization. This preclusion violates the due process principle that no one may be deprived of liberty without an opportunity to contest the factual premises on which the deprivation depends.

Moreover, the finding as to the Communist Party was made as of April 20, 1953, but precluded the Amer-

ican Committee as to the nature of the Party on June 27, 1960. The denial of an opportunity to prove the contemporaneous facts was also a violation of due process.

D. In the *Communist Party* case, a majority refused to determine as premature the contention that the Communist-action provisions of the Act are invalid because they conflict with the privilege against self-incrimination of the Party's officers. The Court should reverse that holding and hold those provisions of the Act invalid for the reasons stated in the dissenting opinions. Such action, if it is taken, will necessarily invalidate the Communist-front provisions.

ARGUMENT

I. THE BOARD AND THE COURT BELOW MISCONSTRUED AND MISAPPLIED THE AID COMPONENT OF THE SECTION 3(4) DEFINITION OF A COMMUNIST-FRONT ORGANIZATION.

Section 3(4) of the Act defines a Communist-front organization in terms of two characteristics, both of which must be present. The organization must be one "which (A) is substantially directed, dominated or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title." We call the first of these characteristics the "control component," the second, the "aid component."

The Board held both components satisfied by concluding (R. 66) that the American Committee is substantially controlled by, and is primarily operated for the purpose of aiding and supporting, the Communist Party, "a Communist-action organization." We here deal with the components in reverse order.

In our view, the Board and the court below misconstrued and misapplied the aid component. The Board's own evidentiary findings conclusively demonstrate that the aid component, properly construed, was not satisfied.[11]

A. The Findings of the Board and the Court Below Show That the American Committee's Operation Consists of Peaceable Activities to Protect the Interests of the Foreign Born

The American Committee has been continuously and actively in operation since its founding in 1933, to a degree which caused the Board to remark (R. 54) on the organization's "apparently tireless work on what it holds out to be issues confronting or affecting the foreign-born." If the American Committee is, as the Board concluded (R. 66), "primarily operated for the purpose of giving aid and support to" the Communist Party, the organization's work obviously should demonstrate that circumstance.

The Board's evidentiary findings, tendentious though they are, establish that the American Committee has devoted itself "primarily," and indeed solely, to activities consonant with its name—the protection of the interests of the foreign born. The third sentence of the Board's findings of fact recites (R. 20) that the American Committee's activities "have centered around the foreign born with considerable effort and attention given to the legal and propaganda defense of individuals involved in deportation and denaturalization cases." The Board devoted a separate section of its findings of fact to the American Committee's

[11] We later show (*infra*, pp. 58-83) that even under the Board's misconstruction, the Board's conclusion is based on irrelevant considerations and incompetent evidence and is not supported by evidentiary findings or the evidence.

"Activities" (R. 53-60). This section shows that the American Committee's work consists of defending all aliens who seek its help, including both Communists and non-Communists, in deportation and denaturalization proceedings; assisting aliens to obtain naturalization; advocating reforms in our immigration and naturalization laws; and otherwise advancing the interests of the foreign born.

The court below similarly described the American Committee's activities, stating (R. 78):

> "The Committee for Protection of Foreign Born (our petitioner) undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in this behalf. It also fought the Internal Security Act and other statutes and proposed legislation, but the major thrusts of its offensive seems to have been the naturalization and deportation features of these measures. The Committee fought in behalf of many members of the Communist Party. There is some dispute as to the proportion of the persons it aided who were Party members. But there is no dispute as to the fact that it enlisted in behalf of many non-Communists."

The court also referred to the American Committee as "an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seek its help" (R. 79), and which by this "laudable, praiseworthy activity" supplies "a facade of good deeds" (R. 80).

Of equal significance to these findings are the things which were not found. Nowhere did the Board or the

court below find or suggest a single instance whereby the American Committee had advocated or otherwise furthered insurrection or other illicit conduct attributed by the Act to the Communist Party; had promoted Communist ideology or, for that matter, any doctrine favoring fundamental social, political or economic changes; or had assisted the Communist Party organizationally, as by recruiting members or raising funds for it.

All seem to agree, therefore, that the American Committee's "primary operation" consists of peaceable activities in the foreign-born field, activities which the court below termed "laudable" and "praiseworthy," and which the Board, though withholding any encomium, was unable to describe as dangerous or malign. The question arises, therefore, as to the basis on which such an organization can have been found to satisfy the aid component of a definition aimed at sinister organizations and contained in an Act which proclaims (sec. 2(15)) that its purpose is to avert "a clear and present danger to the security of the United States and to the existence of American institutions."

The resolution of this question is complicated by the fact that neither the Board nor the court below explicated any theory as to the meaning of the aid component—an omission which also characterizes all other Communist-front cases which either tribunal has decided. There are visible, however, certain assumptions implicit in the application of the aid component by the Board and the court below.

B. The Board Construed the Aid Component to Make It Depend on the Organization's Subjective Motivation, Regardless of the Nature of Its Activities

The Board's Report seems to proceed on the view that the aid component depends not on what an organization does, but on the organization's subjective motivation for what it does. The Board calls this motivation "purpose," presumably under the impression that the aid component refers to motivation when it speaks of an organization's being "primarily operated *for the purpose* of giving aid and support" to the Communist Party.

This theory first appears at the beginning of the Board's findings, as follows (R. 20, emphasis supplied):

> "The activities of the organization have centered around the foreign born with considerable effort and attention given to the legal and propaganda defense of individuals involved in deportation and denaturalization cases. (*Infra.*) A substantial number of those defended and in whose behalf [the American Committee] has worked have been members of the Communist Party and individuals accused of being Party members. (*Infra.*)
>
> "Any one charged in deportation or denaturalization proceedings is entitled to be defended, and anyone or any organization may devote efforts to such defense. This is not to say, however, that an organization engaged in these activities, . . . may not be required to register and make the disclosures covered by the Act if *the activities have been carried out* under circumstances and *for purposes* which make the organization a 'Communist-front organization' as defined in the Act.
>
> "In this proceeding, the issues under the Attorney General's petition are . . . whether [the

> American Committee's] activities have been carried out under circumstances constituting in effect direction and control by the Communist Party of the United States, *and whether the purposes for which the activities have been carried out had the primary aims and objectives of aiding and supporting the Communist Party.*"

Thereafter, and before examining the American Committee's "Activities" (R. 53), the Board devoted itself (R. 37-53) "to consideration of [the American Committee's] organization and purpose" (R. 37), apparently recognizing no distinction between the "purpose" of the organization and the "purpose" of its activities. That this "purpose" refers to subjective motivation appears from some of the evidence the Board considered, including the conclusory opinion evidence of paid government informers as to the "purpose," "real purpose," and "true purposes" of the American Committee or Area Committees (R. 39, 41, 53). The Board repeated its view when it presented the American Committee's side of the supposed "purpose" issue as follows (R. 39):

> "[The Attorney General's] evidence on the purposes was contradicted by [the American Committee's] evidence. [The American Committee's] witness Green did not deny, and affirmatively stated, that one of the activities of the American Committee is to defend members and former members of the Communist Party involved in deportation proceedings. But Green stated that the purpose is not to give aid and support to the Communist Party, or to promote the objectives of the Party."

The Board ended this section of its Report by finding (R. 53) "that the clear preponderance of the evidence

establishes that the purposes of [the American Committee] have been to aid and support the Communist Party."

The Board then proceeded to discuss the American Committee's "Activities" (R. 53-60), which, it stated (R. 42, ftn.), "are also indicative of [the American Committee's] true purposes." In that section the Board stated (R. 57):

> "It is pertinent . . . to examine in more detail the deportee defense activities. In so doing we repeat again that it is not the fact of defending people which is relevant but the purposes for doing so."

The Board concluded the section on "Activities" by finding (R. 60):

> "The work and activities of [the American Committee] in the field of the foreign born have been clearly consistent with the purposes found *supra*, and there have been no activities inconsistent therewith. A substantial part of [the American Committee's] resources, time and efforts have been devoted to campaigns directed at the elimination of all provisions of the laws under which alien members and officers of the Communist Party are deportable, to the legal and propaganda defense of such persons when they have been actually involved in deportation proceedings, and to instigating protests against Government officials when deportation charges have been brought against Communists. [The American Committee] has consistently and strongly sought funds from the public with which to carry out its activities and has sought to win the good will of the foreign born. Obviously, these activities, particularly in opposing the laws and working to prevent the deportation of Communists, constitute aid to the Communist Party."

In its Concluding Findings, the Board stated (R. 65):

> "The weight of the credible evidence established that the purposes of [the American Committee] have in fact been to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States, and secondarily, to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party."

Although the matter is not free of ambiguity and inconsistency, we believe that we can summarize the Board's approach to the aid component as follows:

1. The presence of the aid component depends on a subjective motivation, called "purpose."

2. It is not clear whether this "purpose" refers to the "purpose" of the organization's primary activities or to some generalized "purpose" of the organization itself. Perhaps the difference is unimportant, since the "purpose" of the activities are determined not only by evidence relating to the primary activities, but also by other evidence considered illuminating of the organization's general "purpose."

3. The primary activities of the American Committee are directed to protecting the interests of the foreign born, including defending deportation and denaturalization cases of both Communists and non-Communists. The American Committee's defense of Communists is particularly relevant, it being stated in the Board's Concluding Findings (R. 65) that the primary "purpose" of the American Committee (the word "purpose" now manifestly being used in a dif-

ferent sense than before) is "to fight in many ways to prevent the deportation from the United States of members and officers of the Communist Party of the United States."

4. It is not subversive for an organization to defend persons, even if they are Communists, in deportation and denaturalization proceedings. But if the motivation ("purpose") of the defense (or perhaps of the organization) is to help the Communist Party, then the organization satisfies the aid component.

5. According to the Board's Concluding Findings (R. 65), a secondary "purpose" of the American Committee is "to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the program and aims of the Communist Party." Just what this refers to is completely unclear. As we later show (*infra*, pp. 80-83), there is not a single evidentiary finding, much less any evidence, to support this conclusion.

6. The aid component does not require that the organization aid the sinister objective or methods attributed by section 2 of the Act to the Communist Party or even that it aid the Party as such. Most likely, *any* activity of the organization can qualify it for the component, so long as there exists the requisite motivation ("purpose") to aid the Party. Or it may be that the activity must be one which can at least be said to benefit the Party indirectly, such as is the situation here where the American Committee's defense of deportation cases helps (with the connivance of the federal courts) to prevent the deportation of aliens accused by the government of being members of the Party, and some of whom actually are members.

If such a nexus is not a requisite, it is certainly useful in finding the aid component satisfied.[12]

The position taken on behalf of the Board in the court below also featured the alleged subjective motivation of the American Committee's defense of aliens accused in deportation cases of Communist Party membership. The government's brief in the court below stated (pp. 22-23) its theory as to the meaning and applicability of the aid component as follows:

> "A 'front' does not have to be operated with the purpose of advancing directly the objectives of the world Communist movement, the question is whether it acts so as to aid the 'action' organization, the Party, and with the purpose of aiding it.
>
> "It is not denied that the American Committee did defend in deportation proceedings persons charged with past or present membership in the Communist Party, and that it also defended such persons in de-naturalization cases. It also defended non-Communists. It gave advice as to naturalization procedures, and it issued booklets to inform the foreign born, like the leaflet, A. G. Ex. 20, 'Know Your Rights.'
>
> "Petitioner argues (Brief, pp. 45-46) that Section 3(4) 'cannot and does not depend on motivation; whether an organization is primarily operated for the purpose of aiding the Communist Party depends on the objective character of its activities.' That argument would read out of Sec-

[12] The obscurity of the Board's theory and findings on one of the major issues requires, without more, that its order be set aside. *S.E.C.* v. *Chenery Corp.*, 318 U.S. 80, 94; *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194, 196-97; *Colorado-Wyoming Gas Co.* v. *F.P.C.*, 324 U.S. 626, 634; *Burlington Truck Lines* v. *United States*, 371 U.S. 156, 168; Act, sec. 13A(f); sec. 8(b), Administrative Procedure Act, 5 U.S.C. 1007(b), made applicable by Act, sec. 16.

tion 3(4) the words 'for the purpose of,' which plainly imply intent. If an organization defends deportation cases with the intent to aid the Party, it comes within the words 'for the purpose of.' . . .

"Since the application of Section 3(4) depends on operation 'with the purpose,' we must look to the intention or purpose of the persons who actually direct its operations, not to the nominal heads, who do not control or direct its actual operations." [12]

C. The Court Below Construed the Aid Component to be Present Whenever An Organization Under Communist Party Control Engages in Activities Which Can Favorably Impress the Public

In applying the aid component, the court below first found (R. 78) that the American Committee "undoubtedly devoted the major portion of its efforts to contesting the deportation of aliens and promoting their naturalization. It furnished counsel and material in court cases in that area, issued statements, made pleas, and in every possible way battled in their behalf." This activity, the court held, aided and supported the Communist Party in two ways.

First, insofar as some of the defended aliens were members of the Communist Party, the American Committee thereby aided the Party itself, for, "Obviously the naturalization of its members and the prevention

---

[12] That the American Committee's guilt arises from its defense of aliens charged with Communist Party membership also appears from a statement made at the administrative hearing by counsel for the Attorney General (Tr. 4720-21): "What we have attempted to do is simply to show that the American Committee defends these foreign people who are charged with present or past membership in the Communist Party, and as a means of doing that they engaged counsel and in some cases paid counsel themselves for representing these foreign born people so charged."

of their deportation were direct aims and purposes of the Communist Party" (R. 78).

The second way in which the American Committee aided the Communist Party, characterized by the court three times as "subtle" (R. 78, 80), consisted of the organization's defense of non-Communist aliens. The court's view was that this activity aided the Communist Party by improving the Party's public relations. The court explained (R. 78-80):

> "To establish itself as the champion of the foreign-born and to imprint such an image of itself on the public mind would obviously be of major benefit to the Party. But the protection of the rights of the foreign-born is not only a laudable objective; it is a basic one in this country. This is true not only theoretically and philosophically but also historically and factually. What, then, of an organization which vigorously devotes itself to the protection of the rights of all and any foreign-born who seek its help? Is it to be held a Communist front because the ends sought are Communist aims? Of course not. But, if in espousing causes which are Communist objectives, an organization does so because of Communist control and direction, is it then a Communist front? To reach an answer to this question we think we must trace the pertinent considerations to their base. . . .
>
> "In the foregoing context it is indubitably clear that any laudable, praiseworthy activity which is identified in the public mind with the Communist Party or with Communism, or is so identified as being within the community of policies advocated by the Party, is a benefit to and naturally an objective of the Party. The identification of itself with laudable causes would, of course, be a benefit to the Party, as it is to any organization. The identity of its prominent members with such causes is also

> a worthwhile project for an organization seeking power among the public. More subtle and less effective, but perhaps the only route to public acceptance available to a clandestine operator is to create a picture of a community of interest between its own causes and interests which bear public acclaim. This is indeed a subtle business, but if effectuated it would be a real and substantial aid and support to the Party. This is one of the theses of the statute. The Congress declared that the Communist movement attracts strength to itself by operating behind a facade of good deeds."

Although this passage is not without its difficulties,[14] it plainly holds that an organization which meets the control component also meets the aid component—and as a result is a Communist-front organization—if its primary activity consists of doing "good deeds" in pursuit of "laudable objectives," since the combination of Party control and good deeds aids the Communist Party by burnishing its public image.[15]

---

[14] These include the mystifying equation of "laudable objectives" with "Communist aims" and "Communist causes." And see *infra*, pp. 47-48.

[15] In its opinion, the court referred to "a prominent thread of Communist interest" running through the American Committee's activities (R. 81). The court then cited various things in support of this statement. One of these, for example, was that the American Committee took the position that the statutory provisions for deporting aliens who were or had been members of the Communist Party "were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine." (R. 82.) We cannot tell from the opinion whether these observations were intended to have relevancy to the aid component. Chief Judge Bazelon, dissenting, apparently thought they were part of the court's discussion of the control component (R. 88), and we treat the subject later (*infra*, pp. 93-96) on a like assumption.

The court's application of the aid component thus deviated from the Board's in two significant respects. (1) The court's theory that the American Committee's defense of non-Communist aliens helped the Communist Party by winning it credit for good deeds was not a basis for the Board's order. The Board's attitude toward the American Committee's defense of non-Communists was merely negative, the Board holding that such activity "is not persuasive in showing independence from Communist Party control or operation for Party purposes" (R. 58). (2) The court's theory did not, as did the Board's, rest on a probing of the American Committee's motivation.

These differences alone require a reversal of the judgment below, it being elementary that "a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency." *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194, 196. See also *S.E.C.* v. *Chenery Corp.*, 318 U.S. 80.

D. The Aid Component, Properly Construed, Requires a Showing That the Organization's Activities Aid the Insurrectionary Objectives Attributed to the Communist Party By Section 2 of the Act

The divergences between the Board and the court below are over-shadowed by the common factor in their application of the aid component. Both found the component satisfied by what Chief Judge Bazelon's dissent described (R. 86) as "innocent objectives and innocent activities"—in this case, the American Committee's work in behalf of the foreign born, and particularly its defense of aliens involved in deportation cases.

In our view, the aid component does not, and for constitutional reasons cannot, comprehend innocent activities directed toward innocent objectives. This is so regardless of the motives of the organization and its leaders and whether or not the Communist Party advocates like objectives, or controls the organization, or reaps public approval for the organization's "good deeds." Properly construed, the aid component refers to aiding the insurrectionary activities ascribed to the Communist Party by section 2 of the Act. At the very most, the component can be expanded only to include direct aid to the Party itself in its organizational operations, such as recruiting Party members or giving it financial support. It does not include, as the majority held, such attenuated and speculative indirect benefits as improving the public "image" of the Party (R. 78) by promoting "laudable causes" (R. 80). Nor does it include assistance to individual Party members in their personal problems (and still less aid to non-Communists) merely because the Party as an organization may indirectly benefit therefrom. Defending from deportation an individual who is, or is accused of being or having been, a Communist is not aid to the Communist Party for the purposes of the Act, any more than is medical treatment of such an individual when he is ill.

If we are correct, the judgment below must be reversed and the order of the Board set aside. This is so not only because the Board and the court applied erroneous legal theories, but also because there is no basis in the evidence or the evidentiary findings to attribute to the American Committee the kind of aiding activity required by section 3(4)(B).

Our view is supported by conventional methods of statutory construction.

1. Considerations of policy, common sense and the over-all legislative objective condemn the construction of the Board and the court below. The Act, a self-proclaimed measure for the protection of the national security, is misused when invoked against a group, regardless of its motivations, which does not imperil our security and engages only in "laudable" activities.

A final registration order, together with the attendant sanctions on the organization and its members (*supra*, p. 5), is obviously a death sentence for any cause organization. The organization cannot retain members and contributors, win public support, find an audience for its views, or even hire a hall. The organization which has here been condemned to death by registration has for over thirty years rendered unexcelled services in defending the foreign born from the rigors and inhumanities which mar our immigration laws and their administration. Not the least of these services has been the able defense of aliens who could find no other defender because of the political nature of the deportation charge against them. (*Supra*, pp. 10-12.)

Yet the American Committee was condemned not in spite of its contributions to society, but precisely because of them. For it was the American Committee's defense of the foreign born, particularly in legal proceedings, which was held to satisfy the Act's requirement that Communist-front organizations be primarily operated for the purpose of giving aid and support to the Communist Party. One may well apply to such a construction Mr. Justice Clark's criticism of a com-

parable, hypothetical interpretation of a state statute aimed at activities intended to "aid" the Communist Party. "To so interpret the language of the Act is to extract more sunbeams from cucumbers than did Gulliver's mad scientist." *Baggett* v. *Bullitt*, 377 U. S. 360, 383 (dissenting opinion).

It is an offensive concept that the American Committee aids and supports the Communist Party for the purpose of the aid component by defending the deportation and denaturalization cases of foreign-born members of the Party. On the contrary, the defense of unpopular individuals is in aid of the highest American traditions and the administration of justice. If the American Committee aided the Communist Party by defending Charles Rowoldt and Peter Harisiades from deportation, what are we to say of the Court which voided one of the deportation orders and of the dissenting Justices who would have done the same to the other? *Rowoldt* v. *Perfetto*, 355 U.S. 115; *Harisiades* v. *Shaughnessy*, 342 U.S. 580. Did Wendell Willkie aid the Communist Party by defending and winning in this Court the denaturalization case against William Schneiderman, a leading Communist official? *Schneiderman* v. *United States*, 320 U.S. 118. The *New York Times* thought not. It said in an editorial, "Mr. Willkie, for his action, deserves the thanks of all Americans" (R. Ex. 179, p. 8).

The correct analysis was given in the testimony of Professor Louise Pettibone Smith, the honorary chairman of the American Committee (Tr. 4144-45):

> "Q. Now, when the American Committee defends Communists or persons accused of being Communists, does it defend the principles of Communism? A. We are not defending principles of

> anything except justice and fair play. We are defending people and we are attempting to hold in a period when that seems to be somewhat difficult, the old tradition of this country of freedom of speech . . . free assembly and the right of petition."

The fact is that our system of justice has been discredited by the persecution of an organization for defending persons in legal proceedings, particularly when the persecution is intigated and led by the governmental department which is the adversary in those proceedings. Moreover, by their expansive interpretation of the aid component to reach laudable and constitutionally protected activities, the Board and the court below have magnified the constitutional defects of the Act (see *infra*, pp. 108-09). Such an application of the Act serves no security interest and wantonly sacrifices values which our society professes to cherish.

By destroying the American Committee, the decision below will deprive the entire foreign-born community of its most principled and skilled defender. And considering the fate of the American Committee, no other organization will be so foolhardy as to replace it in that role. Thus one ignoble result of this case will be to facilitate the prosecution of deportation and denaturalization cases by making it difficult or impossible for the accused to obtain counsel and other assistance.[16]

---

[16] Professor Chafee has observed: "The American Committee for Protection of Foreign Born has supplied competent lawyers to many aliens arrested on deportation charges, who might otherwise have been defenseless and who had ever so much to lose from mistaken decisions. Whatever objections can be made to some of the activities or backers of enterprises like these, it is plain that if the government pulls up the tares, it will pull up a good deal of wheat too." Chafee, *The Blessings of Liberty* (1956) 134.

Is the national security really served by this laying of a foundation for future Palmer raids?

The decision below, if it stands, will adversely affect all cause organizations, no matter what their field of operation. The decision authorizes the government to lay a heavy hand on such groups and their members for doing nothing more than using lawful means to promote objectives which are considered commendable by many or most of the American people. So the transgression of the American Committee is its work by peaceable methods towards an end described by the court below as "laudable"—"the protection of the rights of all and any foreign-born who seek its help" (R. 79). By the same token, as Chief Judge Bazelon pointed out in his dissent, the Act can be used against any organization with "innocent objectives and innocent activities," including "promoting public school integration" (R. 86). The court below, bemused by a Madison Avenue vision of the Communist movement busily improving its public image "by operating behind a facade of good deeds" (R. 80), has made the doing of good deeds a dangerous occupation.

The Board, though apparently not the court, ruled that good deeds are visited by the Act's reprisals only when motivated by a desire to help the Communist Party. But no one can feel safe in joining an organization, no matter how "laudable" all its activities, if the organization can be officially condemned as a Communist-front on the ground that it surreptitiously entertains a pro-Communist motivation. Especially is this so when the inquiry into the organization's motives—surely a peculiar subject—is conducted by an agency which is organically suspicious of all agitation against the status quo. And even without Board

proceedings, the right of association is impaired by a decision which subjects all cause organizations, no matter how benign their activities, to federal surveillance designed to detect hidden motivations.

Nor can much, if any, comfort be derived from the fact that the Act by its terms applies only to organizations which, even if they do good deeds, are substantially controlled by the Communist Party. The Board's compulsion to credit the stale narratives and conclusory opinions of unreliable, paid informers, always in inexhaustible supply, make it child's play to demonstrate such control to the Board's satisfaction whenever the government is intent on doing so (see *supra*, pp. 64-71, 87-88).[17] And if the organization survives the Board proceeding, it may, if this case is a sample, obtain an inadequate, politicized judicial review from a court which has such singular notions as that the protection of the rights of the foreign born is a "Communist aim" (R. 79) and that viewing political deportations as a threat to American freedom "of course, is Communist doctrine" (R. 82).

In short, the Communist-front provisions of the Act as construed and applied by the Board and the court below do not protect the national security, produce offensive results, and endanger the right of association.

---

[17] For an example of how readily organizations can be condemned as being under Communist influence, see *Washington Daily News*, Aug. 18, 1964: "John H. Rousselot, National Director of Public Information for the John Birch Society, said here last night that the Communist Party was providing 'decisive leadership in the Negro civil rights movement' and that top officers of leading civil rights organizations were associated with hundreds of communist front organizations. * * * Mr. Rousselot . . . cited as his sources the House Un-American Activities Committee, Joint Committee of the Tennessee Legislature and an Investigating Committee of the Texas House of Representatives."

2. The terms of the Act do not compel such untoward results and are inconsistent with the construction of the Board and the court below.

(a) By definition (sec. 3(4)), a Communist-front organization must be controlled by a Communist-action organization and "primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title." A Communist-action organization is in turn defined (sec. 3(3)) as one which is under Soviet control and "operates primarily to advance the objectives of such world Communist movement as referred to in section 2."

Since the objectives attributed to the world Communist movement by section 2 are all sinister, such too must be the operational activities of a Communist-action organization. *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 55, accepted as the fair construction of the "objectives component" of a Communist-action organization that the organization operate to advance the following objectives: "(a) overthrow of existing government by any means necessary, including force and violence, (b) establishment of a Communist totalitarian dictatorship, (c) which will be subservient to the Soviet Union."[18]

The sensible reading of "aid and support to a Communist-action organization," as used in section 3(4)(B), is aid to such an organization in the distinctive activities which characterize it as an action organiza-

[18] The Court found it unnecessary to decide whether an organization can satisfy this definition by operating to advance only one or two of the three described objectives (at 55).

tion. To read the language otherwise permits an "absurdity" of "possibilities" (*Cramp* v. *Board of Public Instruction*, 368 U.S. 278, 286). The sensible reading is not satisfied by an organization whose "aid" to the Communist Party is confined to innocent activities in pursuit of innocent objectives—in this case, defending the rights of the foreign-born, Communist and non-Communist, by litigation and leaflets.

Under section 3(3), and its construction by this Court in the *Communist Party* case, *supra* at 55, the Communist Party could not be required to register under the Act as a Communist-action organization unless it were found to engage in the specific type of baneful conduct described above. The Party could not, for example, be required to register if all it did was to "aid" the Soviet Union (and its public image) by helping to promote Soviet purchases of wheat or the performances of Soviet musicians and dance groups in this country. It would indeed be anomalous if the Act were harsher and less selective toward organizations other than the Communist Party by requiring them to register for engaging in innocent activities.

(b) The legislative history confirms that Congress was not seeking to hit innocent activity. The House Report (No. 2980, 81st Cong., 2d Sess., Aug. 22, 1950) on the bill which became the Act (H. R. 9490), after stating (pp. 2-3) that the proposed legislation involved "a most perplexing and difficult problem," added (p. 3): "How to protect freedom from those who would destroy it, without infringing upon the freedom of all our people, presents a question fraught with constitutional and practical difficulties." The Report then said (at p. 3, emphasis supplied):

> "In considering the problem, the committee found it necessary at the outset *to distinguish those*

> ***features of Communist activity against which legislation cannot and should not be directed from those in the case of which legislative restraints are clearly practicable and necessary.*** Communism as an economic, social, and political theory is one thing. Communism as a secret conspiracy, dedicated to subverting the interests of the United States to that of a foreign dictatorship, is another."

By holding the Act applicable to organizations which, even if Communist controlled, are engaged only in "laudable activities," the Board and the court below obviously failed "to distinguish those features of communist activity against which legislation cannot and should not be directed" from those features which the Act seeks to control.

(c) The construction of the Board and the court below eliminates the aid component of section 3(4). By their construction, any organization satisfies the aid component if it does things which in any way benefit, or are intended to benefit, the Communist Party. Since the Party would obviously not control any other kind of organization, the two components of the definition are reduced to one—the presence of Party control.

(d) The view of the Board and the court makes section 3(4) inconsistent with the sanction provisions of the Act and sections 2(7) and 13(f)(3). Our view harmonizes the provisions.

First, as Chief Judge Bazelon pointed out (R. 86), the severity of the sanctions levied by the Act on members of Communist-front organizations, most of whom

will not be Communists,[19] "shows that Congress had no intention of inflicting them on otherwise innocent people merely because of membership in otherwise innocent organizations that the Communist Party uses to advance an innocent aim."[20]

Secondly, section 2(7) recites, as the justification for the Communist-front provisions, that Communist Parties operate through Communist-front organizations "in carrying on the activities referred to in paragraph" 2(6). The activities described in 2(6) are conspiratorial efforts to seize government power and set up foreign-controlled Communist totalitarian dictatorships. Congress expressed no concern about organizations which engage solely in non-dangerous activities, such as the legal defense of deportation cases or the doing of other good deeds.

Section 2(7) also recites that Communist-front organizations conceal the facts as to their true character and are thereby able to obtain a public support they would not otherwise get. The court's public relations theory is manifestly inconsistent with this recitation. For how is the Communist Party "identified in the public mind" (R. 80) with the beneficent activities of an organization which, like the American Committee, has always stoutly maintained that it is controlled by

---

[19] Judge Prettyman, the author of the majority opinion below, has elsewhere recognized that "almost by definition, many members of a Communist front are unsympathetic to Communist aims or Communist philosophy." *National Council of American-Societ Friendship* v. *S.A.C.B.*, 322 F. 2d 375, 379.

[20] The fact that some or all of the sanction provisions are or may be unconstitutional (*Aptheker* v. *Secretary of State*, 378 U.S. 500) does not, of course, detract from their utility in illuminating the Congressional intent of accompanying provisions.

nobody other than itself and promotes no policies except its own (see, e.g., R. 8-9, 12, 39, 42, 56)? Indeed, it is only the Board and the court below who have improved the image of the Communist Party by giving it credit for the American Committee's good deeds.

Finally, section 13(f)(3) requires the Board, in determining whether an organization is a Communist-front, to consider "the extent to which its funds, resources or personnel are used to further the objectives of any Communist action organization, Communist foreign government, or the world Communist movement referred to in section 2." The only objectives ascribed to Communist-action organizations by section 2 are the sinister ones mentioned. Section 13(f)(3) serves no function whatsoever if the aid component can be satisfied by a furthering of "laudable" objectives.

(e) There is no substance to the Board's view (*supra*, p. 28) that the word "purpose" in section 3(4)(B) makes the aid component turn solely on the subjective motivation of the organization, without regard to the nature of its activities. "Purpose" has an objective, as well as subjective, meaning. One of the dictionary definitions of the word is "an object, *effect, or result* aimed at, intended, *or attained*," the objective part of this definition being illustrated by the expression, "energy applied to little purpose" (Webster's *Third International Dictionary*, 1961).[21]

The Act is supposedly concerned with threats to the national security. It makes no sense to classify actions as dangerous or non-dangerous according to their

[21] And cf. Leontes' observation, "Hermione, my dearest, thou never spok'st to better purpose." *The Winter's Tale*, Act I, scene ii.

motivation rather than according to their nature. Nor is it rational to investigate the motivation of an organization comprised of individuals of varying motives.

The Act provides for Board proceedings against three kinds of organizations. These are Communist-action organizations, defined in section 3(3); Communist-front organizations, defined in section 3(4); and Communist-infiltrated organizations, defined in section 3(4A). There is a common pattern to the definitions. Each consists of two components, the first of which is a control component, the second an aid component. The second component of section 3(3) is operation "primarily to advance the objectives of such world Communist movement." The second component of section 3(4A) is serving "as a means for (i) the giving of aid or support to" any Communist-action organization, Communist foreign government, or the world Communist movement, "or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material force required by its Armed Forces."

Thus in each of the two definitions which are cognate to section 3(4), the second component refers to the organization's aiding *activities*. Since the word "purpose" is happily not used, there is not the slightest basis for making the 3(3) and 3(4A) definitions turn on the organization's motives. By making motive the key factor in section 3(4), the Board destroys the symmetry of the Act on no better basis than an artless reading of the words "for the purpose of."

II. THE BOARD AND THE COURT BELOW MISCONSTRUED AND UNCONSTITUTIONALLY APPLIED THE ACT BY IMPOSING LIABILITY ON THE AMERICAN COMMITTEE FOR MATTERS FOUND CONCERNING OTHER ORGANIZATIONS (THE AREA COMMITTEES) WITH WHICH IT COOPERATED BUT WHICH IT DID NOT CONTROL.

A. The American Committee Was Held Liable for Matters Found Against the Area Committees Despite the Absence of Evidence That It Controlled the Latter Groups.

Much of the evidentiary findings in the Board's Report concern various of the Area Committees. These findings were relied on by the Board as bases for its conclusions adverse to the American Committee on both the control and aid components. The findings refer to such things as the purposes of various Area Committees, Communist Party interest and participation in their activities, and Communist Party membership of officers of Area Committees (R. 33-35, 38-39, 61). There is no finding and no evidence that the American Committee knew of the matters so found. In view of the prejudicial nature and volume of the findings, it is incontestable that the order of the Board must be set aside if the Board erred in holding the American Committee liable for the actions and personnel of the Area Committees.

The evidence from which the Board derived the findings was introduced by the Attorney General on the assumption that the Area Committees were local branches of, and directed by, a national organization, the American Committee (R. 3, 21). As we have seen, however, despite instances of erratic terminology, the Area Committees were not constituent elements of the American Committee, and the American Committee, though it cooperated with them, neither had nor exercised any control over them. Accordingly, the American Committee did not attempt to rebut the Attorney

General's evidence concerning Communist Party influence in or control over the Area Committees, but took the position that it could not be held liable for the acts and personnel of independent organizations with which it cooperated but which it did not control. (*Supra*, pp. 7-8, 14-15.)[22]

The Board's Report did not find that the Area Committees were constituent components of the American Committee. Nor did it find in the teeth of the evidence that the Area Committees were controlled by or subject to the control of the American Committee. The basis on which the Board predicated liability of the American Committee for conduct found against the Area Committees was that the American Committee and the Area Committees, by reason of their cooperation, constituted a single "organization" as defined by the Act. So the Board found (R. 27):

> "We find on the entire record that the American Committee and the various area or local committees are associated together for joint action on particular subjects. Together they constitute a voluntary association and one organization within the meaning of the term 'organization' set forth in section 3(2) of the statute."

Section 3(2), on which the Board finding is predicated, defines the term "organization" as follows:

> "Section 3. For the purposes of this title—
>
> * * * *

[22] This is not to say that we agree with the Board's findings concerning the Area Committees, which seem to us to exhibit the same faults as its findings concerning the American Committee proper.

> (2) The term 'organization' means an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects."

The court below likewise held that the evidence against the Area Committees was to be considered against the American Committee, but on grounds not advanced by the Board. Although the point was fully briefed, the court did not say whether the Board was correct in its interpretation of section 3(2). Instead, the court stated (R. 77):

> "There is much discussion in this record, and here, as to whether these local groups were autonomous organizations[23] or were integral parts of our petitioner, the national Committee. We think the point is unimportant. It is abundantly clear that, whatever the technicalities may be as to the nature of these unincorporated associations, they were intermeshed with the national group, not only in policies but in operation."

We do not know, in the absence of any exegesis, precisely what the court meant by "intermeshed," but the term seems to denote something different than the phraseology of section 3(2), "associated together for joint action on any subject or subjects," on which the Board relied. In any event, in the light of accepted principles of judicial review (*supra*, p. 37), we believe that the question here must be defined not in terms of "intermeshing," whatever that means, but according to

---

[23] This is a misstatement of our position, which was that the Area Committees were independent, not "autonomous," organizations.

the Board's legal theory. The question is, therefore, whether, by reason of section 3(2), independent organizations which associate together for joint action on any subject or subjects constitute thereby one organization, so that each of the organizations may be held liable under the Act on evidence relating to the actions, nature and personnel of the other. The correct answer is clearly in the negative.

B. The Imposition of This Vicarious Liability Was An Unconstitutional Application of the Act

The Board's theory extends the repugnant doctrine of guilt by association beyond all known or reasonable limits and is thus contrary to deep-grained traditions and plainly unconstitutional. Vicarious liability may be imposed, as in a principal-agent situation, where one person controls another. But here, as we have seen, there was no finding that the American Committee controlled the Area Committees, and all the evidence is to the contrary.[24]

Furthermore, when vicarious liability is imposed on participants in a common enterprise—as partners, joint venturers, or conspirators—the liability is limited to conduct within the scope of the enterprise defined by an express or implied agreement of the participants. Likewise, in the principal-agent case, the vicarious liability of the principal is limited to responsiblity for conduct of the agent within the scope of his au-

[24] Even in a principal-agent situation, the agent is not vicariously liable for the conduct of the principal and other agents of the principal. But under the Board's one-organization theory, each Area Committee is liable for the acts and personnel of the American Committee and of all the other Area Committees. Yet it was never claimed that any Area Committee controls the American Committee or other Area Committees.

thority and while on business of the principal. Under the Board's theory, however, whenever two organizations act together "on any subject or subjects," each is charged with responsibility (a) for all acts of the other organization, including those not connected with the specific enterprise in which they are cooperating, and (b) even for the political affiliations of the other's officers!

As everybody knows, the National Association for the Advancement of Colored People, the Committee on Racial Equality, the Student Non-Violent Coordinating Committee, and various other groups from time to time cooperate in projects to promote integration. Does this mean that if a Communist is found in any one of these groups, all the others are equally responsible for the purposes of the Act?

The Act is on its face a deterrent to the constitutional right of individuals to associate in organizations. The Board's construction increases this deterrence immeasurably by making it dangerous for organizations to associate or cooperate with other organizations. This fact in turn further inhibits intra-organizational association. For an individual cannot feel safe in joining an organization no matter how sure he is of its purity; he must now have the same confidence about all other organizations with which his may possibly cooperate, even if only "temporarily" and for the purposes of action on a single "subject." Thus the Board's construction interferes with association in and by organizations which by no stretch of the imagination are under Communist control or serve Communist ends, and the exposure of whose affairs cannot possibly serve the purposes which the Act ascribes to its registration provisions.

The Board's doctrine even goes beyond the lay tendency to judge persons according to the company they keep. For the Board did not find the American Committee to be of dubious character by reason of association with the Area Committees. Instead, under the one-organization theory, the Board attributed to the American Committee specific conduct found to have been engaged in by the Area Committees and their officers—and this even without any finding that the American Committee knew of such conduct.

The Board's application of the Act in this respect violates the due process clause of the Fifth Amendment by imposing vicarious liability and disabilities for conduct in which those held liable did not engage, of which they were not aware, and which cannot be imputed to them by any reasonable or conventional standards. Cf. *Aptheker* v. *Secretary of State*, 378 U.S. 500; *Wieman* v. *Updegraff*, 344 U.S. 183.

The Board's application of the Act in this respect also violates the First Amendment by creating a "serious encroachment" on the right of association which is not justified by a "compelling" governmental interest (*N.A.A.C.P.* v. *Button*, 371 U.S. 415, 438; *Bates* v. *Little Rock*, 361 U.S. 516, 524), and which goes "far beyond what [is] necessary to achieve a legitimate governmental purpose" (*Shelton* v. *Tucker*, 364 U.S. 479, 489).

Under the Board's construction, its registration order against the American Committee also applies to the Area Committees, since these constitute a "single organization" with the American Committee. The Area Committees had no notice of the proceeding, were not parties thereto, and did not participate thereon. Yet they have incurred, without benefit of hearing,

an official governmental defamation and the onerous obligation of registering. Thereby the Board's order denies the Area Committees procedural due process. See *Renaud* v. *Abbott*, 116 U.S. 277, 288; *Cole* v. *Arkansas*, 333 U.S. 196, 201.

C. The Board's Construction Is Not Supported by the Language of Section 3(2)

Even without regard to constitutional objections, the Board's theory cannot be derived, as the Board thought, from the language of section 3(2). The obvious purpose of that section was to make the Act apply to all groups whether or not they were legalistic "entities" and even though informally organized, such as groups without by-laws, constitutions or defined membership requirements. It is foreign to this purpose to treat several distinct groups as one merely because they cooperate.

Section 3(2) refers to "a group of persons . . . associated together for joint action." The group is single. The word "associated" modifies the persons who constitute the group, not the group itself. The Board's version misreads the section as referring to several groups associated with each other instead of persons associated in a single group.

If the Board is right, registration is impossible. If several independent groups are a single organization for the purpose of liability, then they are, by the same statutory definition, a single organization for the purpose of complying with the registration requirements of section 7. But the officers of organization *A* do not have, and cannot obtain without having control over the other organizations, the information concerning

organizations *B, C, D, E,* etc. which must be supplied in the registration statement required by section 7.[25]

Finally, the Board's construction makes pointless the Communist-front provisions of the Act. Under the section 3(4) definition, a Communist-front organization is, at a minimum, necessarily "associated together" with the Communist Party "for joint action on any subject or subjects." It follows from the Board's theory that all Communist-front organizations are ipso facto one organization with the Communist Party. Thereby they share the latter's existing obligation to register as a Communist-action organization, especially since the definition of a Communist-action organization expressly applies to "any section, branch, fraction or cell" of any such organization which has not registered (sec. 3(3)(b)). The Board's theory thus makes superfluous the Act's provisions for separate proceedings against, and separate registrations by, Communist fronts.

III. THE BOARD AND THE COURT BELOW OTHERWISE MISAPPLIED THE ACT AND RELIED ON IRRELEVANT CONSIDERATIONS AND INCOMPETENT EVIDENCE TO AN EXTENT WHICH DENIED THE AMERICAN COMMITTEE BOTH A FAIR HEARING AND AN ADEQUATE JUDICIAL REVIEW.

The Board and the court below committed numerous prejudicial errors in addition to their mistaken reliance on evidence concerning Area Committees. Any one of these would require a reversal. In their totality they demonstrate that the American Committee was denied both a fair hearing and an adequate judicial review,

[25] For like reasons, an accused organization is not equipped to defend all other organizations with which it has cooperated. Yet by the Board's theory, it is faced with the necessity of doing so in order to defend itself.

that the Board and the court misapplied the provisions of the Act, and that the Board's order cannot be supported by any fair evaluation of the evidence.

A. The Board's Conclusion as to the American Committee's "Purpose" Otherwise Rests on Irrelevant and Incompetent Evidence and Misapplications of the Act

We have already seen that the Board misconstrued and misapplied the Act by making the aid component depend on the American Committee's subjective motivation, called "purpose." But even if the Board is right in its legal theory, its conclusion that the American Committee's "purpose" was to aid the Communist Party must be set aside because it derives from an incredible melange of irrelevancies, distortions, omissions, and incompetent evidence. In what follows, we examine all the subsidiary findings from which the Board derives its "purpose" conclusion, but not in the same order in which the findings appear in the Report.[26]

1. Defense Work Beyond Normal Purposes.

A major prop for the Board's conclusion as to the American Committee's true "purpose" is supplied by findings that the organization went beyond its avowed purposes by activity in the cases of Estes, Green, and Eisler.

---

[26] The Board's evidentiary findings on the American Committee's "purpose" are contained principally in the section of its Report entitled "Organization and Purposes" (R. 35-53). The section so intermingles findings about the American Committee with findings about the Communist Party as to require readers to be vigilant against the possibility of attributing to the American Committee matters found about the Party. We will not trouble to examine the latter.

(a) *The Estes and Green cases.*

The Board finds (R. 42) that the American Committee "went beyond the normal defense of the foreign born by supporting Communist Party functionaries Fred Estes and James Green," who were found in contempt of court following their refusals to produce evidence in deportation proceedings as to whether certain aliens were members of the Communist Party.

Even if it were true that the American Committee supported Estes and Green in their contempt cases, this would not be inconsistent with a purpose to defend the foreign born, since the contempt stemmed from refusal to inform on aliens facing possible deportation charges. Leaving this aside, the finding that such support was given is absurd.

The *only* evidence on which this finding is based is an item in the January 1950 issue of the American Committee's news periodical, *The Lamp* (P. Ex. 210, p. 2).[27] The item reads in full:

> "IMMIGRATION SERVICE USES NON-CITIZENS IN TEXAS AS BASE FOR ATTACK ON CITIZENS.
>
> "The non-citizen population of Texas is less than two percent of the total population of the state. During the past month, however, the Immigration and Naturalization [sic] in Texas has unleased an 'anti-alien' hysteria which is resulting in the threatened jailing of American citizens.

---

[27] The government lodged with the court below, but not as part of the formal record, a copy of the Board's Report annotated to the record of the administrative hearing. The finding of support for Estes and Green is annotated only to P. Ex. 210. No other reference to those individuals appears in the record.

"Dallas

"On December 20, Fred Estes, an American citizen, local Communist Party organizer, was sentenced to 30 days in jail and a $100 fine by Federal District Judge Atwell for refusing to produce his organization's books at immigration hearings held to establish whether seven non-citizen residents of Dallas are members of the Communist Party. An appeal against Judge Atwell's order and sentence for 'contempt of court' is pending.

"Houston

"On December 23, James J. Green, Texas secretary of the Communist Party, was found in contempt of court and sentenced to sit in jail until he testifies before a hearing of the Immigration and Naturalization Service as to whether two non-citizen residents of Houston are members of his organization. The two non-citizens are Mr. and Mrs. Kurt Wittenberg. The Service started a public campaign against them when they applied for permission to return to Germany, from which they fled before the second World War as anti-Nazi refugees."

It is obvious that this news item supplies not the least foundation for the Board's finding that the American Committee "supported" Estes and Green and thereby exceeded the "normal defense of the foreign born." On the contrary, the finding is so preposterous as to illustrate the Board's bias.[28] The court below failed to notice the Board's reliance on this finding although the matter was briefed. Thus the court once again failed its obligation of judicial review.

---

[28] The real "support" for Estes was given by the Fifth Circuit, which reversed his contempt conviction. *Estes* v. *Potter*, 183 F. 2d 865. We have not found a report of Green's case.

(b) *The Eisler case.*

The Board found (R. 43) that the American Committee went "beyond" its "normal, avowed purposes" by filing "a legal brief in [Eisler's] behalf in the contempt of Congress case, in addition to defending him in the deportation matters." The Board also found (R. 43-44) that by campaigning to let Eisler leave the country, the American Committee seemed to "exceed" its "avowed purpose" and "advanced positions similar to those advanced by the Communist Party." These findings loom so large that Eisler's is the one case specifically named in the Board's Concluding Findings (R. 66). And the court below offered as its first evidence of "a prominent thread of Communist interest" in the American Committee's activities that the organization "took vigorous positions in regard to the Gerhardt Eisler affair" (R. 81). The court explained (R. 81-82): "Eisler was foreign-born, to be sure, but this was not a naturalization or deportation matter; quite the contrary, in fact. The controversey which swirled about Eisler concerned his membership in the Communist Party and his refusal to testify before the House Committee."

The versions of both the Board and the court below constitute a distortion of the evidence.

The only evidence of any American Committee participation in Eisler's contempt case consists of a news item in the March-April 1949 issue of *The Lamp* (P. Ex. 202, p 2). It is there reported that the American Committee filed with this Court an amicus curiae brief in Eisler's contempt case, arguing "that Gerhart Eisler did not have to answer questions put to him by the Committee on Un-American Activities of the House of

Representatives since, at the time he was brought before the House Committee, he was under detention as a 'dangerous enemy alien' at the orders of Attorney General Tom Clark and therefore could be considered a prisoner of war. The [amicus] brief points out that as a prisoner of war, Gerhart Eisler was entitled to not answer questions put to him."[29] Since, as the Board and the court failed to note, the amicus brief consisted of a legal argument of the rights of interned aliens, it was obviously within the American Committee's "avowed purpose" to protect the interests of the foreign born.

Equally baseless is the Board's finding, ignored by the court below, that the American Committee may have exceeded its avowed purposes by campaigning "to avoid [Eisler's] being held on deportation charges and immediately to let him leave the country" (R. 44).

The uncontradicted evidence on this subject is as follows. On February 2, 1948, the Attorney General arrested Eisler on a deportation warrant and held him on Ellis Island without bail pending the deportation hearing. Eisler requested the American Committee to represent him in the deportation proceeding and to seek to obtain his release on bail. The American Committee agreed to do so, as it would have done in any other case. It then learned from Eisler that he did not

[29] This Court granted certiorari in Eisler's contempt case (335 U.S. 857), but later dismissed the writ when Eisler fled the country after argument but before decision. *Eisler* v. *United States*, 338 U.S. 189, 338 U.S. 883. An examination of the Court's records will show that the amicus brief filed for the American Committee argued that Eisler, as an interned enemy alien, was entitled under international law to the rights of a prisoner of war and therefore was immune from coercive interrogation under Article 5 of the Geneva Convention on Prisoners of War, 47 Stat. 2030.

want to resist deportation, but on the contrary wanted to leave the United States and return to Germany. What prevented his return was the Attorney General's refusal to allow him to leave. In fact, the only reason Eisler was in the United States at all was that he had entered on a transit visa en route to Mexico, and the United States government had refused to allow him to continue his journey. Not without cause, the American Committee considered that the holding without bail of a man who was anxious to leave the country was not a good faith deportation proceeding, but was an attempt to harass Eisler and thereby to intimidate the foreign-born. The National Conference of the American Committee on December 11 and 12, 1948, adopted a resolution entitled "Let Gerhart Eisler go home," following which the American Committee campaigned in favor of Eisler's being permitted to depart. In the meantime, the American Committee instituted legal proceedings and obtained Eisler's release on bail. (Tr. 5429, 5432, 5436-42; P. Ex. 200; P. Ex. 244, p. 2; P. Ex. 194, p. 3; see *U. S. ex rel Doyle et al.* v. *District Director,* 169 F. 2d 753.)

Thus the efforts of the American Committee in this matter were (1) to secure an alien's release on bail pending his deportation hearing and (2) to obtain for an alien who wished to depart the right to leave the country. These endeavors were clearly legitimate and within the avowed purposes of the organization. The Board represented (R. 66) that advocating that an alien be permitted to leave the country was inconsistent with the American Committee's policy against deportations. But clearly there is no inconsistency in advocating that aliens be able to stay or leave as they themselves decide.

The American Committee defended 4,000 to 5,000 cases over a 20 year period (Tr. 6112-13). The Board's inability to carp about more than the Eisler case and its contrived finding of "support" for Estes and Green are a testament to the fact that the American Committee has steadfastly adhered to its purposes in its defense work.

2. Incompetent Conclusory Testimony of Lautner.

In support of its "purpose" conclusion, the Board found (R. 40):

> "[The Attorney General's] witness Lautner testified, without contradiction or denial, and the testimony is credited, that Abner Green, and also Harriet Barron, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to the American Committee, and 'fitted' Party policies into the functions of the American Committee."

The court below relied heavily on this finding, stating (R. 76):

> "There was direct and specific evidence that Green and Barron attended Party meetings, were advised of Party policies, and carried out these policies in the work of the Committee."

But contrary to the Board, which utilized the finding only to support its conclusion on the aid component, the court utilized the finding only in support of the control component (see R. 75), thereby again failing to observe the correct function of judicial review.

It should first be observed that the Board's statement that the testimony was "without contradiction or

denial" is belied by the Board's own later statement (R. 56; and see Tr. 4874):

> "Green further testified that the national conferences have been the only body of the American Committee that have ever set the policies of the organization; that the conferences elected the officers; and that the policies and decisions of the national conferences have been binding on the officers of the American Committee."

We later see (*infra*, pp. 98-102) that it was error to rely on any of Lautner's testimony because of the curtailment of his cross-examination. Leaving aside this fact, the finding rests on incompetent evidence. The finding derives exclusively from the following passage in Lautner's direct examination (R. 107-08):

> "Q. Do you know whether or not the American Committee for the Protection of Foreign Born during the time you were a member of the Party [1929-1950—R. 67] had any connection whatsoever with the Party, speaking of the Communist Party?
>
> * * * * * *
>
> The Witness: Yes.
>
> * * * * * *
>
> Q. What connection, if any, did it have?
>
> Mr. Forer [counsel for the American Committee]: I object. It is too general a question.
>
> Mr. Morrisey [hearing examiner]: The objection is overruled.
>
> The witness: The functionaries of the Protection of the Foreign Born, the top functionaries, like Abner Green and Harriet Baron, attended Party meetings and had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to their own organization, and fitted Party policies into the functions of their own organization.

> Mr. Forer: I move to strike that testimony as being completely opinion and conclusory, or at least that part of the answer about 'had carried out Party policies' and what follows it, as being conclusory and opinion testimony.
>
> Mr. Morrisey: The motion to strike will be denied."

The objection and motion to strike were obviously well taken. Lautner never testified to what was said or occurred at the Communist Party meetings to which he referred or what were the Party polcies involved. There was no foundation enabling him to testify as to whether Party policies were carried out by or fitted into the functions of the American Committee. To the contrary, as Lautner acknowledged on cross-examination, he never attended any of the American Committee's meetings or affairs and was not acquainted with its work (Tr. 1108-10, 1138-43, 1176).

No organization is safe if it can be condemned on such conclusory, unsupported testimony from an unqualified witness, particularly when it comes from a hostile informer in the pay of the adversary and the tribunal and reviewing court choose to ignore the contradictory testimony of a witness who is qualified to speak about the organization. It was inexcusable for the court to characterize this bit of Lautner's testimony at "direct and specific evidence" (R. 76).

Moreover, as both the Board and the court failed to notice, Lautner's testimony was rebutted, and Abner Green's contrary testimony corroborated, by the inability of the Board to point to any instance in which the American Committee or Green or Barron ever did anything contrary to the policies of the organization as established by its constitution and the

resolutions and decisions of its governing body, the Annual Convention.[30]

3. Incompetent Opinion Testimony.

The Board relied (R. 38-39) on testimony of the Attorney General's paid informers Baldwin, Glatis and Lautner that the "purpose" of the Michigan Committee for Protection of Foreign Born (Baldwin, R. 123), the New England Committee for Protection of Foreign Born (Glatis, Tr. 774), and the American Committee (Lautner, Tr. 1004) was to defend members of the Communist Party involved in deportation or naturalization difficulities.

Reliance on the testimony was erroneous on several grounds, even leaving aside the fact that the Baldwin and Glatis testimony referred to Area Committees only (see *supra,* pp. 50-57). The testimony was opinion testimony. It was, therefore, valueless and incompetent unless (a) it was based on facts disclosed in the record and (b) the witnesses had first-hand knowledge of facts from which the opinion could legitimately be drawn. McCormick, *Evidence* (1954) § 11; *Giant Food Stores, Inc.* v. *Fine,* 269 F. 2d 542. The testimony satisfied neither requirement. Neither the Board's Report nor the record discloses facts on which the witnesses' opinions were based, and none of them was in a position to observe the relevant facts. Baldwin never attended any affair of the Michigan Committee or par-

[30] The court stated (R. 75) that, "The evidence was overwhelming that the board of directors and the annual conferences were perfunctory, as such boards and conventions so frequently are in unincorporated associations." The Board made no such finding; the court cites none of the "overwhelming" evidence; and we state categorically that there is no evidence in the record to support the court's characterization.

ticipated in its activities (Tr. 1538-40). Lautner never attended any meeting or affair of the American Committee, never participated in its activities, and had no knowledge of its work (Tr. 1008-10, 1138-43, 1176). Glatis' opinion testimony was based, as the Board finds (R. 38-39), on his attendance at three meetings of the New England Committee, literature received from the New England Committee, and "conversations during my Communist Party membership" (Tr. 774). He gave no testimony of anything that went on at the meetings which could justify his opinion. He did not identify or describe the literature. We do not know what conversations he was talking about, but whatever they were constituted rank hearsay.

Nor could the opinion evidence be received as expert testimony. The subject (purpose of an organization) was not "beyond the ken of the average laymen" and hence was not a proper matter for expert testimony. McCormick, *Evidence*, § 13; *Jenkins* v. *United States*, 307 F. 2d 637, 643. Nor did the witnesses qualify as experts on the subject. And finally, the opinion testimony was inadmissible because it was on one of the ultimate issues in the case. *United States* v. *Spaulding*, 293 U.S. 498, 506; *Simmons* v. *United States*, 206 F. 2d 427, 429-30; *Wesson* v. *United States*, 164 F. 2d 50.

Thus the Board condemned the American Committee on the basis of the bare, unsubstantiated opinion of professional informers who had no opportunity to observe the operation of the organization concerning which they gave their opinion. And if opinions do count, only bias could explain the Board's eager acceptance of the Attorney General's dubious witnesses, while giving no weight at all to the opinions of Prof.

Louise Pettibone Smith (Tr. 4121-30, 4136), Prof. Anton J. Carlson (Tr. 4419-20, 4423-25), attorney Horace S. Meldahl (Tr. 4726-29), Prof. Harvey K. McArthur (Tr. 5545-46), Rev. Charles A. Hill (Tr. 5800-01), and Bishop Arthur W. Moulton (Tr. 7019-21), all of whom testified, with more knowledge than the Attorney General's witnesses, that the American Committee conforms to and carries out the purposes, expressed in its constitution (R. 41), to defend the interests of the foreign born regardless of race, color, nationality, creed, or place of birth.

The court below ignored the Board's reliance on incompetent opinion testimony, although the subject was briefed.

4. Hearsay.

In determining the "purpose" of the American Committee, the Board found (R. 38) that "the Communist Party took the initiative in the formation and organization of "the Northwest Committee for Protection of Foreign Born "in order to have an organization to defend the Party people subject to deportation and to win the support of the foreign born to Party programs and aims."

As the Board's Report shows (R. 37), the finding derives from testimony of Harper and Hartle (R. 67). This testimony, given in 1955, was that in 1948 and 1949, at committee meetings of the Communist Party in Seattle, Henry Huff, a local Party official, and others spoke of the need for having a local branch of the American Committee in order to defend Communist Party members threatened with deportation and to attract support of the Communist Party line from those interested in the problems of the foreign born (Hartle, R. 127-28; Harper, R. 142-43).

The testimony was obviously incompetent, being hearsay of what Henry Huff and others had said seven years before.

Of similar nature was testimony of Mary Markward, which the Board held (R. 41) to be "further evidence relevant to the real purpose" of the American Committee. As described by the Board (*ibid.*), this testimony had three parts. (1) Markward first learned about the American Committee by reading about it in the Communist Party press. We submit that Markward's reading experiences have no bearing any more than that Abner Green first learned of the American Committee by reading about it in the New York Post (Tr. 4804). (2) In 1946, at Communist Party meetings in the Maryland-District of Columbia area, Markward heard the American Committee discussed as an organization that from time to time assisted Party members. This testimony was both hearsay and irrelevant. (3) In 1948, Dorothy Strange, described by the Board as "a Party functionary,"[31] told Markward that she was working for the American Committee and that this work "was just as important to the cause of the Communist Party and was helping the Communist Party just as much as any work anybody was doing as even a functionary of the Party." We doubt that any other American tribunal would have relied on such grotesque evidence—hearsay testimony of another's abstract and ambiguous opinion.

Those who are familiar with the unique rules of evidence applied by the Board will recognize its acceptance of the described testimony of Hartle, Harper

[31] There is no evidentiary basis for the Board's insinuation that Strange was a Communist Party functionary while working for the American Committee (*infra*, p. 91).

and Markward as instances of a Board-devised exception to the hearsay rule. This exception is that a witness may testify to what a non-witness said if the former says that the latter was a Communist. The exception is not recognized by Wigmore and has no theoretical foundation. Moreover, the exception obviously imposes an unfair and unsurmountable obstacle to the defense of accused organizations. For the hearsay is of a kind which is virtually impossible to rebut, since the organization obviously cannot get the Communist non-witness to testify on what he did or did not say some years ago at a Party meeting or elsewhere.

The court below did not notice our objections to the Board's reliance on hearsay.

5. Praise from the Communist Party.

Another basis for the Board's conclusion that the American Committee has a "purpose" which satisfies the aid component was a passage from a 1951 report to a Communist Party convention. The report stated that "the Committee for the Protection of the Foreign Born, led by the devoted and indefatigable Abner Green, performs invaluable service in the fight against the government's deportation drive," and, "It is the duty of all progressives to appreciate the need of these organizations [i.e., the American Committee and the Civil Rights Congress, which also had the misfortune of being lauded], help raise funds and support their work." According to the Board, this reference to the American Committee tended to corroborate the (incompetent) testimony of Lautner and indicated that the American Committee "is the organization used by the Party to carry out Party objectives regarding de-

portees and the foreign born." (R. 40.) The court below was also impressed by the passage (R. 76-77), but again departed from the Board by relying on it as evidence of the control component rather than the aid component (see R. 75).

As the American Committee has consistently and publicly stated, it has defended, among others, aliens accused in deportation and denaturalization cases of past or present Communist Party membership (*supra*, p. 10). It is not strange, therefore, that the Communist Party should praise the American Committee. But to attribute a sinister purpose to an organization because it is praised by the Communist Party is simply pernicious nonsense, not to mention that in this case the evidence of the praise was, by normal technical standards, inadmissible as hearsay.

Furthermore, if the American Committee is to be discredited by praise from the Communist Party, then it should be credited where the praise comes from non-Communist. The Board conceded (R. 62) that the American Committee has been endorsed by "prominent people" (see also *supra*, p. 13). Wendell Willkie wrote to Abner Green (R. Ex. 208): "Incidentally, I think you are doing a great job. That kind of work is an indispensable work in America." Franklin D. Roosevelt said (R. Ex. 135) that the American Committee "has undertaken the task of assuring fair play to the foreign born within the United States. Every American wishes it success." Why should the praise of Communists be so devastating and the praise of Republicans and Democrats so ineffectual?

6. Non-deviation.

a. *Misuse of non-deviation as a test of the aid component.*

Section 13(f) of the Act provides that in determining whether an organization is a Communist-front organization, the Board shall take into consideration certain criteria, including "(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of" the Communist Party. The Board held that the American Committee has not deviated from the views and policies of the Communist Party. It employed this finding to support its conclusion that the American Committee's "purpose" is to aid and support the Communist Party. (R. 53, 65.)

This Court viewed the comparable non-deviation test in section 13(e)(2) of the Act (for Communist-action organizations) as relevant only to "the issue of Soviet domination of the Party"—i.e., to the control component of section 3(3). *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 61. The Board's reliance on non-deviation as a test of the aid component of section 3(4) was, therefore, an error of law, which in itself requires a reversal.

The treatment of this error by the court below again illustrates the deficiency of the review afforded this case. We briefed the point below (Br. for Pet., p. 32). The government did not claim that we were mistaken in our factual premise that the Board had relied on non-deviation solely to support its finding on the aid component. Instead the government contended (Br. for Resp. pp. 23-24) that the Board was right in doing

so, arguing, we think erroneously, that non-deviation is relevant to both the control and aid components.[32]

Nevertheless, the court below did not consider whether or not the Board erred in so applying the non-deviation test. Instead, manifesting no awareness of the plain facts and the understanding of both sides, the court affirmed the Board's non-deviation finding as part of its holding that the evidence was sufficient to establish the control component (R. 77, and see R. 75). Thus the court not only ignored the Board's error, but committed error of its own by affirming the Board's order on a theory which the Board had not employed.

b. *The evidence of non-deviation.*

Since the Board, though wrongly, relied on non-deviation to support its conclusory finding on the aid component, we will examine the Board's evidentiary findings on that subject at this point of our brief. Such an examination discloses that the conclusory finding is not supported by the evidentiary findings, and that the Board misapplied the non-deviation test in ways other than that already mentioned.

(i) *Eisler.* The first ground for the Board's non-deviation finding is that both the American Committee and the Communist Party criticized the government's refusal to allow Gerhart Eisler to leave the country (R. 44). We have already seen (*supra*, pp. 62-64) that the American Committee's position was fully in accord with its general purpose to obtain fair treatment for aliens.

(ii) *The Smith Act.* The Board found that the American Committee and the Communist Party took

[32] The government did not explain why, in that event, the Board did not also rely on non-deviation to support its control conclusion.

similar positions on the Smith Act. This finding has three prongs, of which the first is that, "Like the Communist Party [the American Committee] has taken and advanced the position for repeal of the Smith Act" (R. 44).

The Smith Act is the Alien Registration Act of 1940, 54 Stat. 670 (see Tr. 5922-23). Section 2, added by a floor amendment, is a penal provision dealing with advocacy of the violent overthrow of the government. This "sedition section" has itself become commonly known as "the Smith Act" and has been employed to prosecute Communists. See *Dennis* v. *United States*, 341 U.S. 494; *Yates* v. *United States*, 354 U.S. 298; *Scales* v. *United States*, 367 U.S. 203; *Noto* v. *United States*, 367 U.S. 290. The great bulk of the whole Smith Act (the Alien Registration Act), however, deals with the registering, fingerprinting, reporting and deportation of aliens.

Abner Green testified, without contradiction, that the American Committee compaigned against enactment and then for repeal of the anti-alien provisions of the Alien Registration Act, and that the American Committee did not campaign against the adoption or for the repeal of the sedition section (Tr. 5922-24). The Communist Party's denunciation of "the Smith Act" related only to the sedition section and the prosecutions thereunder; the Party showed no awareness of the anti-alien provisions of the statute (see R. 44-45). Obviously, therefore, the American Committee in this respect deviated from the Communist Party.

The second prong of the Board's finding of non-deviation with respect to the Smith Act is an article which Abner Green wrote for a newspaper not published by

the American Committee. The article (A.G. Ex. 169) criticised the then recently decided cases of *Harisiades* v. *Shaughnessy*, 342 U.S. 580, sustaining the validity of deportations under the Alien Registration Act for membership in the Communist Party which had terminated before enactment of that act, and *Carlson* v. *Landon*, 342 U.S. 524, sustaining the authority of the Attorney General to hold aliens in custody without bail pending hearings on charges that they were deportable for Communist Party membership. Both cases had been sponsored by the American Committee as tests of the applicable statutory provisions. Green's article described the decisions as examples of a prevailing pattern of "un-American reaction," and said that the jailing of Communists under the Smith Act's sedition provision "creates an atmosphere which makes possible still greater incursions on the liberties of all sections of the people."

The Board seemed to think it particularly significant that an anti-Smith Act statement issued by the National Committee of the Communist Party in October 1951 said, "The court of last appeal is the American people," and Green's article (published April 9, 1952), said, "But the court of last resort, the people itself, is still to be heard from" (R. 44-45).

Thirdly, the Board found (R. 45), that the American Committee's "opposition to the Smith Act has not been limited to the 'anti-alien' provisions." It cited the following evidence. (1) At one of its national conferences the American Committee adopted a resolution "urging support of an organization named Civil Rights Congress in defense of the Communist Party officials indicted for violation of the conspiracy provisions of the Smith Act" (R. 45). (2) American

Committee statements urging repeal of the Smith Act did not always specify that they were limited to the alien provisions of that statute (R. 45). (3) A 47-page booklet attacking the Immigration and Nationality Act, authored by Abner Green and published by the American Committee (R. Ex. 191), contained a sentence, "The Smith Act prosecutions and jailings of Communist Party leaders bolster the McCarthys and Veldes" (R. 46).

By any rational standards, the trivia cited by the Board do not demonstrate a significant similarity between the Communist Party's offensive against the sedition section of the Smith Act and the American Committee's opposition to the anti-alien provisions of that legislation plus Green's scattered asides against the sedition section.

(iii) *More asides.* From the same 47-page booklet written by Abner Green (R. Ex. 191), the Board culled three more sentences on current events considered by Green to illustrate how anti-Communist hysteria created an atmosphere detrimental to both the foreign born and the native born (R. 46-48). One sentence mentioned "the rotten frame-up of the Rosenbergs" (R. 46), another the Taft-Hartley Law, and a third the "vicious Jim Crow system" (R. 47). The Board found that the last sentence "is part of the evidence indicating that [the American Committee] has followed the Communist Party line in seeking to influence and win over the Negro people" (R. 48). The other evidence of which this was "part" was evidence of the Party's line, not of the American Committee's line (R. 48).

(iv) *Criticism of the government.* The Board also found evidence of non-deviation in the fact that the

American Committee criticized the government in a handful of passages selected from the huge volume of American Committee literature (R. 50-53). Among the things considered significant by the Board were that Communist Party literature has at times used the terms "reaction," "reactionary forces," "ruling class" and "American imperialism" (R. 48), and Abner Green used the terms "camp of native reaction," "reactionary elements" and "fascist propagandists" in a speech to the American Committee's 1945 Annual Conference (R. 50),[23] and the phrases "reaction in the United States" and "American reaction" in a Committee booklet (R. 51). The Board also claimed that "defense of the Communist Party" was woven into two American Committee booklets dealing with the government's political deportation drive and written by Green (R. 51; see also R. 59). The booklets themselves (P. Ex. 56, 166) belie the claim, as do even the excerpts quoted by the Board out of context (R. 51-53, 59). All these show is that Green did not share the Board's anti-Communist animus.

The Board's emphasis on the American Committee's criticism of the government was also one-sided. The Board failed to note that the American Committee had had high praise for the administration of the

[23] The Board asserted (R. 50) that Green applied this terminology to "American leadership." This is untrue. Green's speech applied the terms to unidentified reactionary and fascist elements in the United States (P. Ex. 259, pp. 11-12). It is the Board, not Green, that identified these groups with "American leadership." It is interesting that the Board did not mention a speech, very similar to Green's, made by Congressman Emanuel Celler to the same conference (P. Ex. 259, pp. 5-6). Mr. Celler's speech, entitled "Forces Subversive to American Democracy," criticized reactionary groups in American life and used such terms as "Hitlerite jackals," "evils of fascism and Nazism," "white supremacy," and "fascist slavery."

Immigration and Naturalization Service under Commissioner Earl Harrison, whose policies and actions it considered fair and humane (see, e.g., R. Ex. 246).[34]

(v) *Defense of Communist aliens.* Finally, the Board rested its finding of non-deviation on the fact that the American Committee has defended Communists, as well as non-Communists, in deportation proceedings, criticized the Department of Justice's Communist deportation drive, and called for a repeal of the Communist deportation laws (R. 58-60). Thus the Board, having begun with the proposition that the defense of Communist aliens in deportation proceedings is not subversive unless done with the motive of aiding the Communist Party (*supra*, p. 28), ended by inferring that motive from the fact of defending Communist aliens.

The evidence of non-deviation consists, therefore, of the fact that the American Committee opposes the deportation of Communists, as well as of all other resident aliens, and the Communist Party, naturally enough, also opposes the deportation of Communists. Everything else consists of a few trivalities and irrelevancies (like Abner Green's rhetorical style and asides against the Smith Act's sedition section), combed and distorted from the great mass of American Committee literature issued over a twenty-year period.

Nothing in this record remotely resembles the evidence of non-deviation which was found significant

---

[34] Mr. Harrison returned the compliment. In 1943, in accepting an award at a dinner given by the American Committee in his honor, he said of the American Committee: "In my experience with you, I have found you appreciative of the problems and responsibilties of the government, as well as your duty toward those you wish to assist. We are grateful for your interest." R. Ex. 187, pp. 3-4; Tr. 5663-64, 5672.

in the *Communist Party* case. Here there was no "coincidence of policies extended over a vast area of subject matter . . . absolutely invariant during more than thirty years . . . unbroken even in the face of sharp reversals in the Soviet's views." *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 60-61.

The Board's finding is contrary to the intent of the framers of the Act, who recognized that agreement with the Communist Party on a handful of issues does not satisfy the non-deviation standard. On the floor of the Senate, Senator Graham expressed the fear that under that standard an organization might be condemned under the Act because its views on the Truman Doctrine and the Marshall Plan were the same as those of the Communist Party. Senator Mundt, one of the two principal originators of the Act, replied: ". . . no court could find that there was no deviation between an organization which shared the Communist view point on only two questions and the Communist Party, which has viewpoints on many other issues and matters . . . ." Senator Graham persisted: "But suppose the organization by its charter could take a position on only those two matters." Senator Mundt replied: "Then by its silence it would deviate from the Communist Party in regard to all of the rest of the issues on which the Communist Party takes a stand. It would not be found Communist by a preponderance of the evidence." 96 Cong. Rec. 14532.

7. The Reservoir Conclusion.

In its Concluding Findings, the Board held (R. 65) that the purposes of the American Committee have been to fight to prevent the deportation of members and officers of the Communist Party, "and secondarily,

to seek to win the good will of a certain sector of the population as a reservoir from which could be drawn adherents to and supporters for the programs and aims of the Communist Party."

We are able to identify only three passages in the preceding text of the Report which seem in any way germaine to the Board's conclusion of the "secondary" purpose.

In the first of these passages, the Board found (R. 36) that the Communist Party's policy toward the foreign born is (1) to seek to prevent the denaturalization and deportation of Party officers and members and (2) "to win the goodwill of the foreign born and obtain from them adherents to and support for the Party and for Party programs." That such would be Communist Party policy is self-evident, but it does not follow that the American Committee has the same policy.

In the second passage, the Board found (R. 38) that the Communist Party took the initiative in forming the Northwest Committee for protection of Foreign Born "in order to have an organization to defend Party people subject to deportation and to win the support of the foreign born to Party programs and aims." This again relates to a desire of the Communist Party, not of the American Committee. It is significant that the Board cited no evidence that the Northwest Committee ever in fact carried out the Party's desire "to win the support of the foreign born to Party programs and aims." Moreover, we have already seen that the Board erred in considering the evidence relating to Area Committees (*supra*, pp. 50-57), and that the particular finding under discussion was based on hearsay testimony (*supra*, pp. 69-70).

The third passage is this (R. 57-58):

> "[The Attorney General's] witness Lautner testified that the defense of non-Party members was not incompatible with the operation of [the American Committee] as a Party defense organization, that 'In fact, that would add to the prestige of the organization.' . . . Such defense activities and the approaches used by [the American Committee] . . . are consistent with the purpose of the Communist Party to have an ostensibly non-Party organization to assist Party members involved in deportation, and with the purpose of winning the good will and support of the entire foreign born segment of the population. In the context of this record, the fact that [the American Committee] has defended a number of non-Communists is not persuasive in showing independence from Communist Party control or operation for Party purposes."

This conclusory finding that the American Committee's defense work is not inconsistent with the purpose of winning the good-will of the foreign born does not support the later conclusory finding that the American Committee has the purpose of winning such good will, much less that it has the purpose of winning such good will as a reservoir from which to draw adherents to the Communist Party. There are also other objections to the quoted passage. (1) It misstates Lautner's testimony on the subject. Lautner testified that the defense of non-Party aliens would "add to the prestige of the organization," but he did not say anything about such defense activity being "not incompatible with . . . operation as a Party defense organization" (R. 117). (2) Lautner's testimony was incompetent, being opinion on a matter not properly the subject of opinion testimony and concerning which he had

no special qualifications to testify (see *supra*, pp. 67-68). (3) Lautner's testimony (R. 117) was that the defense of non-Communists would add prestige to the American Committee, not to the Communist Party. (4) All of Lautner's testimony must be disregarded because of the curtailment of his cross-examination (*infra*, pp. 98-102).

In sum, the Report contains no evidentiary findings which can supply a rational basis for the grandiose Concluding Finding that the American Committee has a secondary purpose of creating a reservoir of good will for the Communist Party.

We have now reviewed all the subsidiary findings from which the Board derived its conclusion that the American Committee had the motive ("purpose") of aiding and supporting the Communist Party. We submit that this conclusion is an obvious canard and was not adequately reviewed by the court below.

B. The Conclusion of the Board on the Control Component and the Affirmance Thereof by the Court Below Otherwise Rest on Irrelevant and Incompetent Evidence and Misapplication of the Act

For reasons already explored, the Board's conclusion on the control component is vitiated by the fact that it, as well as the finding on the aid component, derives in large part from the irrelevant evidence concerning Area Committees. We have also seen that the Board's non-deviation finding is untenable, so that the control conclusion also falls if it is based, as the court below apparently thought, on the non-deviation finding.

In what follows we examine the remaining bases for the Board's control conclusion and its affirmance by the court below.

1. Misapplication of Section 13(f)(1).

Section 13(f)(1) of the Act provides that in determining whether an organization is a Communist-front, the Board shall take into consideration the extent to which persons active in the management, direction or supervision of the organization are active in the management, direction or supervision of, or as representatives of, the Communist Party.

In applying 13(f)(1) (R. 28-35), the Board found (R. 35) that "the entire organization (national and locals) is effectively under the management, direction and supervision and controlled by members and representatives of the Communist Party." Since this finding coalesces the American Committee and the Area Committees, it is, for reasons already canvassed, on that ground alone erroneous.

Applying section 13(f)(1) to the American Committee itself, the Board found that the organization is "managed, directed and supervised by Abner Green and Harriet Barron;" that both Green and Barron were members of the Communist Party at the time of the administrative hearing, and that Green "has served as a representative of the Communist Party in operating" the American Committee. The Board also found that from 1948 to 1952, the American Committee's naturalization aid director was "Communist Party member Dorothy Strange." (R. 31.) As we later show, the findings of Party membership and representation are erroneous. But even if the findings were sound, they do not represent a proper application of section 13(f)(1).

The key issue under 13(f)(1) is whether persons active in the management of the accused organization

are *at the time of the administrative hearing* active *as representatives of the Communist Party.*[35] The section does not apply merely because managers of the accused organization are members of the Communist Party, in the absence of evidence and findings that they are also Party representatives in the organization. *National Council* v. *S.A.C.B.*, 322 F. 2d 375, 384-85. Nor does the section apply if the managers of the accused organization were once Party representatives. They must be such representatives in the present—i.e., at the time of the administrative hearing.

As we have seen, the Board found (R. 31) that Green "*has served* as a representative of the Communist Party in operating [the American Committee]." But it made no such finding in the present tense or as of the time of the hearing. This was not simply a language oversight. For on the same page of the Report, the Board was at pains to find expressly that Green and Barron were members of the Communist Party at the time of the hearing, as well as previously. Moreover, the Board's finding as to Green's representative capacity derived from "the fact that Green became the top leader of [the American Committee] at the direction of the Communist Party" (R. 31).[36]

---

[35] The section includes not only Party representatives, but also persons active in the management, direction or supervision of the Communist Party. Since, as the court below pointed out (R. 75-76), there was no claim or finding that Green or Barron had any managing, directing or supervising role in the Communist Party, we shall, for purposes of simplicity, limit our discussion to Party representatives.

[36] The Board asserted that its finding derives not only from this "fact" but also "from other evidence of record" (R. 31). The "other evidence" is not identified either in the Report proper or in the annotated version submitted by the government to the court below (see *supra*, p. 59, ftn. 27). The assertion that there is such "other evidence" is unfounded.

This supposed direction of the Communist Party occurred in late 1941 or early 1942 (R. 29-30). Obviously, even the Board realized that evidence that Green became executive secretary in 1941 by direction of the Communist Party could not establish that he was the Party's representative nineteen years later. Hence the Board resorted to the weasel-worded finding, "has served as a representative."

As to Barron and Strange, the Board does not find that they were ever representatives of the Communist Party.

There being no subsidiary finding that any person active in the American Committee's management was a representative of the Communist Party at or even near the time of the administrative hearing, there is nothing to support the Board's application of section 13(f)(1) adversely to the American Committee. The Board's conclusion to the contrary derives from three errors of law (in addition to the error of reliance on evidence concerning Area Committees). (1) The Board held the section, which is concerned with a present status, satisfied by evidence of an episode in the remote past. (2) It held the section, concerned with the presence of Party representatives as distinguished from Party members, satisfied in part by subsidiary findings that Barron and Strange were members of the Party. (3) The finding as to Strange was also an irrelevant basis for applying section 13(f)(1) because there was no finding or evidence that Strange was a manager of the American Committee; to the contrary, the Board found (R. 31) that the organization is "managed, directed and supervised" by only two persons, Green and Barron.

We now turn to the errors in the subsidiary findings.

2. The Evidentiary Findings as to Green.

As already seen, the Board found that Abner Green was a member of the Communist Party at the time of the hearing and had served (at an unspecified time) as a representative of the Party. These findings rest on testimony of John Lautner, an item in the *Daily Worker*, an item in *Political Affairs*, and testimony of Barbara Hartle.

(a) The Board credited testimony by Lautner that Green attended Communist Party meetings, the latest of which was the Party's 1948 national convention, and that Lautner saw Green in the Communist Party building on numerous occasions after 1948 (but necessarily prior to January 17, 1950, when Lautner was severed from the Party). (R. 28, 31, 96.) What happened on any of these occasions does not appear.

The Board also credited testimony by Lautner that early in 1942, he and one Landy, acting as Communist Party representatives, adjudicated a dispute between Green and Irving Novick, both of whom were then employed by the American Committee. According to Lautner, he and Landy decided that Novick should be removed and Green put in as head of the American Committee, and as a result Green was made the head (R. 29, 31, 104-07). What the dispute was about does not appear. Nor does it appear how the decision was implemented, there being no testimony that the decision was communicated to or known by the then Board of Directors of the American Committee, which selected the organization's executive secretary.

Although one could hardly tell it from the Board's Report, which speaks of Green's "attempted contradiction" (R. 30), Green in fact, as the court below recognized (R. 76), "flatly contradicted" Lautner's

testimony on the adjudication, denying that the alleged episode had taken place (R. 170; Tr. 6477, 6866-67), and testifying that Lautner's testimony on the subject was "completely false" (R. 170). Furthermore, the objective circumstances corroborated Green and were inconsistent with Lautner. For unimpeachable documentary evidence established that Green became executive secretary (the top staff position) of the American Committee in December 1941; he was elected to that post by the American Committee's Board of Directors; and he replaced in that position not Novick, but Curt Swinburne, who had resigned after holding the job for about a year (R. Ex. 127, 126; R. 165-67).

The Board's crediting of the uncorroborated testimony of the paid informer Lautner over the corroborated testimony of Green, its suppression of Lautner's unsavory history (*infra*, p. 101), and its refusal to acknowledge Green's direct contradiction of Lautner, demonstrate bias. In any event, the Board could not rightfully rely on Lautner's testimony because of the erroneous curtailment of his cross-examination (*infra*, pp. 98-102).

But even if Lautner's testimony stands and is credited, it does not support the Board's findings. Attendance at Communist Party meetings does not by itself establish Party membership. *Bridges* v. *United States*, 199 F. 2d 811, 836, rev'd on other grounds, 346 U.S. 209. If the Party picked Green over Novick, it does not follow that Green was thereafter its "representative" in the American Committee, nor would his acceptance of preference offered by the Party prove that he was a Party member. Moreover, the claimed attendance at meetings did not go beyond 1948; the even more ambiguous visits to the Party's

building did not go beyond January 1950; and the claimed adjudication was in 1941 or 1942. All these events thus substantially preceded the administrative proceeding and were far too remote to establish membership in the Communist Party at the decisive time. And, as we have already seen, even the Board could not bring itself to find that Green was a Party representative at the only relevant time, that of the hearing.

(b) The Board also relied (R. 28) on an item in the *Daily Worker* of September 7, 1938, referring to an Abner Green, otherwise unidentified, as a member of the Communist Party (P. Ex. 168). This was hearsay and unconnected and remote evidence. And it was utterly preposterous for the Board to regard as evidence that Green was a member of the Communist Party a reference in *Political Affairs* for February 1951 to the "devoted and indefatigable Abner Green" (R. 29).

(c) The Board's finding that Green was a member of the Communist Party also rested on testimony of Hartle that sometime in the period 1948 to 1950 Henry Huff told a Communist Party committee meeting that he had met with Green when the latter had visited Seattle (R. 30, 131). The testimony was obvious hearsay, as well as being remote and irrelevant.

The Board also relied on Hartle's testimony that in 1953 Green "was present at a luncheon meeting of the defendants in a Smith Act trial" and there talked with Huff, one of the defendants in the trial, "about the work of the American Committee and of the progress . . . of the Northwest Committee for Protection of Foreign Born" (R. 30). We fail to see how this establishes that Green was a member or representative of the Communist Party. Moreover, the Board's

account is loaded. Hartle did not call the luncheon a "meeting," she merely said that Green ate lunch with the Smith Act defendants (Tr. 1597, 1599; R. 131). And the Board suppressed Green's testimony that he happened to be at the lunch only because he had no other opportunity to discuss a deportation case with the defendants' trial attorney, that he discussed his business with the attorney apart from others while walking to a restaurant during the trial's luncheon recess, and that the discussion at the lunch was about the trial, with which the other persons there were completely preoccupied (Tr. 6257-63).

The Board found (R. 30) that Hartle's testimony tended "to corroborate Lautner's testimony that Green became leader of [the American Committee] by decision of the Communist Party and served therein as a representative of the Party." But the Board's own version of Hartle's testimony (R. 30) shows nothing which even remotely supports Lautner's account; and contrary to the Board, Lautner did not, and was in no position to, testify that Green served in the American Committee as a representative of the Communist Party (*supra*, pp. 101, 87).

3. The Evidentiary Findings as to Harriet Barron and Dorothy Strange.

The Board's finding that Mrs. Barron was a member of the Communist Party *at the time of the hearing* rests on Lautner's testimony that he attended Party meetings with her *in the 1930's and 1940's* and that in 1949 she visited him at his office in Party headquarters (R. 31, 109-10). The testimony obviously does not support the finding. Moreover, for reasons later stated, Lautner's testimony should not have been accepted because of the erroneous curtailment of his cross-examination.

The Board implied that Miss Strange was a Communist Party member from 1948 to 1952, when she was naturalization aid director of the American Committee (R. 31).

Markward testified that Strange was a member of the Communist Party in Washington, D. C. prior to 1948, at which time she left Washington and went to New York to work for the American Committee (Tr. 3161-64, 3196). There is, however, no evidence that Strange was a member of the Communist Party after she left New York. Moreover, the Board suppressed Green's uncontradicted testimony that in 1948 Strange approached him and Miss Barron at an American Committee conference in Washington; that he and Barron had never seen her before; that she asked for a job with the American Committee, saying that she could not get work in Washington because she was a Negro; that when a vacancy arose soon after, the American Committee hired her, at first on a three-month trial basis and as a receptionist; and that he and Mrs. Barron had never asked her if she was a Communist (Tr. 6081-86).

4. The Board's Misapplication of Section 13(f)(2).

The last basis for the Board's conclusion on the control component was its finding under section 13(f)(2) of the Act that the Communist Party has given the American Committee substantial aid and support (R. 64, 66, 60).

The evidentiary findings on which this conclusory finding was based indiscriminately commingle instances of claimed pre-Act and post-Act support and of claimed support to Area Committees as well as to the American

Committee (R. 60-64).[37] For these reasons alone the conclusory finding cannot stand.

In addition, the evidence on the subject does not support a finding adverse to the American Committee under section 13(f)(2), nor is the support of a kind and amount to justify any inference of Communist Party control of the American Committee.

As the uncontradicted evidence established, and as the Board itself recognized (R. 61), the American Committee has always sought financial support from the public generally and has accepted donations from any givers (*supra*, p. 12). In April 1951, the Communist Party gave the American Committee an unsolicited check of $2,000 to help finance the legal expense of the American Committee's defense of certain Party leaders facing deportation charges (R. 61; A.G. Ex. 156-C). There is no evidence of any other monetary donation by the Communist Party to the American Committee.[38] The donation was obviously insignificant, in view of the fact that the American Committee's annual income "ran as high as $43,500 and its expenses about that much" (R. 81). And donations to the American Committee by other organizations, including contributions from trade-unions earmarked for use in the defense of union members in-

---

[37] The Report found (R. 61) "a consistent pattern of Party support of respondent and aid in respondent's activities." The "pattern" is based on testimony about Area Committees except as to the $2,000 donation and favorable press references hereafter discussed.

[38] The Board's Report also referred to donations of $35.00 and $50.00 to the Los Angeles Committee for Protection of Foreign Born (R. 61, ftn.).

volved in deportation proceedings, was a commonplace (P. Ex. 244, pp. 4-5; Tr. 6237).

The only other support of the American Committee (not including the Area Committees) found by the Board consists of items in the Communist Party press reporting American Committee affairs and activities and making favorable references to the American Committee (R. 63). There is no evidence that the American Committee ever solicited compliments from the Communist Party. Furthermore, as the Board admitted (R. 62), the American Committee has received numerous compliments and extensive support from non-Communist sources, including the Department of Justice.

Since the American Committee steadfastly opposed deportations for Communist Party membership or other political grounds, the Party's commendations were natural and convey no sinister significance.

We submit that favorable press references do not constitute support of an organization within a legitimate reading of 13(f)(2). In any event, the favorable references to the American Committee by the Communist press did not equal, much less overshadow, favorable references to the American Committee by the non-Communist press (R. Ex. 134, 136, 173, 228), nor are they, by any rational standards, indicative of Communist Party control of the American Committee.

5. The Court's Reliance on Improper Considerations.

The foregoing criticisms of the Board's findings and conclusions were raised before the court below, but were not noticed in the court's opinion. Moreover, the opinion demonstrates that the affirmance of the Board's order rests on improper considerations. This

appears from the matters set forth by the court in support of its statement (R. 81) that, "Through all the activities [of the American Committee] runs a prominent thread of Communist interest."

Some of these matters—the American Committee's position respecting Eisler, its defense of deportation cases involving alleged members of the Communist Party, and criticisms of the government—have already been discussed herein and need not be reexamined. The other strands of the court's "thread of Communist interest" are as follows:

(1) The court stated (R. 82):

> "The provisions of the Internal Security Act[39] which were the targets of the Committee's attacks were those which required the deportation of aliens who were or had been members of the Communist Party. The Committee maintained that these provisions were premised on political opinion and threatened the freedom of all American people to their political opinions. This, of course, is Communist doctrine, but so far as this Government is concerned the point was put at rest by the Congressional findings to which we have referred."

(2) The court quoted (R. 82-83) an American Committee statement which criticized three decisions of this Court as "destroying many of the democratic rights accorded non-citizens and jeopardizing, thereby, the liberties of all Americans, native as well as foreign

---

[39] The opinion states (R. 81) that the American Committee's "name for the Internal Security Act of 1950" is "the Walter-McCarran Act." In fact, the American Committee, like others knowledgeable in the immigration field, applied the name "Walter-McCarran Act" to the Immigration and Nationality Act of 1952 (see, e.g., R. Ex. 81, 191). The Internal Security Act is, of course, often called the McCarran Act.

born," and which also declared that "the U. S. Supreme Court had deserted its duty to protect the Bill of Rights." The court juxtaposed (R. 83) a quotation from *The Worker* which said very similar things about two of the same three decisions (P. Ex. 230).

The three decisions criticized by the American Committee (see P. Ex. 216) were *Carlson* v. *Landon*, 342 U.S. 524 (Justices Black, Frankfurter, Douglas, Burton dissenting); *Harisiades* v. *Shaughnessy*, 342 U.S. 580 (Justices Black and Douglas dissenting); and *United States* v. *Spector*, 343 U.S. 169 (Justices Frankfurter and Jackson dissenting).[40] The court failed to observe that the dissents in those cases also contained passages similar to the American Committee's statement. In *Carlson*, Justice Black (at 548) described the majority holding as "a shocking disregard of . . . provisions of the Bill of Rights." In *Harisiades*, Justice Douglas commented (at 598), "We repudiate our traditions of tolerance and our articles of faith based upon the Bill of Rights. . . ."

(3) The court stated (R. 82):

> "The Internal Security Act is directed also at Fascists and all sorts of totalitarians. But we do not find in this record evidence that the Committee fought in behalf of Fascist aliens. Indeed it expressed a hearty antagonism to adherents of that thesis."

As the court itself recognized (R. 78, 79), the American Committee defended all persons who sought its help in deportation or denaturalization cases regard-

[40] The court below mistakenly described all three cases as decided in March 1952 (R. 82).

less of their political views (*supra*, pp. 9-10). To the best of our knowledge and belief, the government has never sought to deport an alien on a charge that he was a fascist. During World War II, there was a brief flurry of denaturalization actions instituted against members of the German-American Bund and other Nazi or fascist sympathizers. The record does not show that any of these sought the American Committee's help. The American Committee did take a public position against these denaturalization actions (*supra*, p. 9).

It seems to us that the court's "thread of Communist interest" evinces not that the American Committee is controlled by the Communist Party, but that the court's review was affected by the court's own political views, including a baffling conception of "Communist doctrine."

6. The Absence of Meaningful Evidence of Control.

In *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 39-40 (emphasis supplied), the Court defined subjection to control for the purposes of the Act as being "a disposition unerringly to follow the *dictates* [of the controller], not by the exercise of independent judgment on the extrinsic appeal that those *dictates* carry, but for the reason that they emanate from that [controller]." The Board cited no instance in which the American Committee received dictates from the Communist Party or adopted programs or policies for reasons other than those arising from its own independent judgment. Thus meaningful evidence of control is lacking. And since neither the Board nor the court paid any attention to this fact, while relying on a hodgepodge of palpably irrelevant matters, they

obviously failed to apply a correct construction of the control component.

Moreover, the undisputed evidence as to the structure and operations of the American Committee negatives the existence of outside control. The organization's governing body, which elects its officers and defines its policies, is the Annual Conference. And anybody, without exception, may participate in the Conference and have full voting rights therein merely by attending and paying a registration fee of $2.00. (See *supra*, p. 6.)

Of course Abner Green conducted the day-to-day operations of the American Committee. But there is not the slightest evidence that in doing so he ever departed from policies established by the open, uncontrolled Conferences. Nor were the implementations of Conference policy concealed from the Conference or the public. On the contrary, the Board's evidence of American Committee activities and policies comes for the most part from American Committee publications, including those authored by Green.

Similarly, the uncontradicted evidence establishes that anybody who chooses to do so can participate in the work of the American Committee, and that no political conditions on such participation are imposed (Tr. 4141, 5099, 5103, 5120). Finally, the uncontradicted evidence establishes that Communist doctrine was never discussed or promoted at American Committee meetings and affairs (Tr. 4614, 4712-16, 4940-44, 5801).

C. Reliance on the Testimony of Lautner Was Erroneous Because of the Curtailment of His Cross-Examination

John Lautner, a former Communist Party functionary turned professional witness for the Department of Justice (R. 96-101; Tr. 1795-06, 1801-06), was the most important of the Attorney General's witnesses. He testified to the connections between the Communist Party and the American Committee itself, as distinguished from Area Committees, concerning which other ex-Communists testified. Lautner was the source for the most damaging findings relating to the control component, and the Board also relied on his testimony to support its conclusion on the aid component.

On the basis of Lautner's testimony, the Board made findings, on all of which the court below heavily relied:[41] (1) that Abner Green, the executive secretary and leading figure of the American Committee, was a member of the Communist Party, served as a Party representative in the American Committee, and had obtained his American Committee post by a decision of the Party (R. 28-31, 75-76); (2) that Harriet Barron, administrative secretary of the American Committee, was a member of the Communist Party (R. 31, 75); and (3) that Green and Barron "had the benefit of the discussions and deliberations of the Party on all policies, and carried out Party policies with respect to the American Committee, and 'fitted' Party policies into the functions of the American Committee" (R. 40, 76). The Board also relied on testimony by Lautner that the American Committee functioned to

[41] In each item of the enumeration that follows, the first record citation is to the Board's Report, the second to the opinion of the court below.

give legal aid to members of the Communist Party (R. 39), and that the American Committee's defense of non-Communists was not incompatible with its operation as a Party defense organization but would add to the organization's prestige (R. 57).

The reliance on Lautner's testimony was erroneous because of curtailment of his cross-examination.[42]

On cross-examination, counsel for the American Committee asked Lautner, "Where do you live?" Lautner refused to answer the question; the hearing examiner refused to order him to answer; the question went unanswered; the examiner refused to strike his testimony; and the Board sustained the examiner's rulings. (R. 113-115, 28 ftn.)

The rulings were a flagrant denial of the right of cross-examination and require reversal. *Alford* v. *United States*, 282 U.S. 687, squarely so held as to the exclusion of the identical question when addressed to an important witness. As *Alford* pointed out (at 692), "Prejudice ensues from a denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them." And (at 693), "The question 'Where do you live?' was not only an appropriate preliminary to the cross-examination of the witness, but on its face, without any such declaration of purpose as was made by counsel here, was an essential step in identifying the witness with his environment, to which cross-examination may always be directed."

---

[42] We have previously seen other grounds on which Lautner's testimony was incompetent or irrelevant (*supra*, pp. 64-68, 82-83, 87-91).

The hearing examiner was therefore obviously wrong in ruling, as he did, that the inquiry as to the witness' residence was not material (R. 114). Understandably, the Board in its Report advanced another justification, saying (R. 28, ftn.) that "the cross-examination shows that [the American Committee's] counsel was adequately informed as to Lautner's background, environment and activities." Counsel knew, of course, that Lautner was a professional government informer. But counsel did not know—nor did the Board cite any possible source from which counsel could know—where Lautner resided and what were his activities and reputation in or about his residence. The Board's ruling comes down, therefore, to an unsubstantiated position that the withholding of the witness' address was not prejudicial. But the plain holding of *Alford* is that the withholding of a witness' residence address is ipso facto prejudicial and a denial of a fair hearing. As *Alford* stated (at 692), "To say that prejudice can be established only by showing that the cross-examination, if pursued, would necessarily have brought out facts tending to discredit the testimony in chief, is to deny a substantial right and withdraw one of the safeguards essential to a fair trial."

Moreover, this case is more aggravated than *Alford*. For though Lautner claimed that he feared for his personal safety if he disclosed his residence (R. 113), the examiner excluded questioning by the American Committee's counsel designed to expose the claim as insincere and preposterous (Tr. 1083-84, 1087-93).[48]

[48] Objections were sustained to the following questions: "As a matter of fact, the reason that you gave for refusing to answer my question is a complete invention which you have made up to glamorize and dramatize yourself, isn't that true?" (R. 115.) "You know, don't you, that Mr. [Louis] Budenz gives his home

Nevertheless, the opinion below does not mention the curtailment of Lautner's cross-examination, although the point was briefed.

Experience has shown that in Board cases, and for that matter in "anti-Communist" cases generally, the government has produced witnesses of the most dubious reliability. Cf. *Communist Party* v. *S.A.C.B.*, 351 U.S. 115; *Mesarosh* v. *United States*, 352 U.S. 1. Lautner himself was a turncoat who, at the time of the hearing and for some years before, derived his income solely from his employment by the Department of Justice as a witness and "consultant" on Communism (Tr. 1795-96, 1801-06). He had an unsavory personal history (Tr. 1824-31), which included, as he admitted, the giving of perjured testimony in a civil suit (Tr. 1827-28). The Board should not be permitted to protect such professional witnesses from cross-examination which must be permitted of all other witnesses. And it would have been more seemly, and more in accordance with its obligation of judicial review, if the court below had at least noticed the point raised concerning the curtailment of Lautner's cross-examination and distinguished *Alford* if it thought that a distinction existed.

The Board's error cannot be rectified at this late date by remanding the case to the Board to permit the questioning which was excluded. Lautner testified in June

address when he is asked that in proceedings?" (Tr. 1088.) "Let me put it this way: Do you know any other anti-Communist witness besides yourself who refuses to give his home address in appearances on the stand?" (Tr. 1088.) "Now, I ask you, is it not a fact that of the hundreds of witnesses who in recent years have been what I think we can call anti-Communist witnesses, and who have been viciously attacked by the Communist Party in turn, is it not a fact that you are the only one who puts on this act of refusing to give your address on some grounds of personal safety?" (Tr. 1092.)

1955 (R. 95, 112). In the intervening years, the neighborhood in which he then resided—and in which he may no longer reside—has inevitably changed; other residents must have come and gone; Lautner's relationships with his neighbors must have changed. It is futile to seek to recreate now what was Lautner's environment and reputation then. Moreover, the Board has already committed itself to believing Lautner, and the hearing examiner who observed his demeanor is dead, as is Abner Green, the witness who contradicted Lautner. The only practicable relief, therefore, is to require that Lautner's testimony be stricken, in which event the Board's order is obviously without an evidentiary foundation.

IV. THE PROVISIONS OF THE ACT RELATING TO THE REGISTRATION OF COMMUNIST-FRONT ORGANIZATIONS ARE UNCONSTITUTIONAL ON THEIR FACE AND AS APPLIED.[44]

A. The Act and the Board's Order Violate the First Amendment Because They Restrain Rights of Association, Speech, Press and Petition Without Justification

1. The Clear and Present Danger Test Applies and is not Satisfied.

The Board's order requires the American Committee to register (and defame) itself as a subversive organization under section 7(b) of the Act and to submit for public inspection (sec. 9) the information concerning its internal affairs and personnel required by section 7(c).[45] These "disclosure" requirements, even without the accompanying sanctions on the organization

[44] We have already briefed (*supra*, pp. 53-56) our contention that the Board applied the Act unconstitutionally by holding the American Committee liable for conduct found against the Area Committees.

[45] The information required by section 7(c) includes a listing of the sources of all income. Accordingly, the organization must supply the names of all its contributors and dues-paying members.

and its members (*supra*, p. 5), at the very least discourage persons from belonging to, supporting, meeting with and working with the organization. Thus they adversely affect the interest in organizational association which is protected by the First Amendment. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449; *Bates* v. *Little Rock*, 361 U.S. 516; *Communist Party* v. *S.A.C.B.*, 367 U.S. 1, 90-91.

In addition, the Act and the Board's order curtail rights of free speech and press and the right to petition the government for redress of grievances. The American Committee publishes and distributes literature and agitates for reforms in the laws and the administration of the laws. These activities are, of course, protected by the First Amendment. So too is the American Committee's sponsorship of litigation affecting the interests of the foreign born. Cf. *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 428-30; *Brotherhood of Railroad Trainmen* v. *Virginia*, 377 U.S. 1. The Board's order conditions the continued exercise of these First Amendment rights on compliance with the Act's registration requirements. Moreover, it was precisely the exercise of these rights which was the foundation for the Board's order. Accordingly, the Board's order imposes a restraint which must conform to First Amendment limitations. *Thomas* v. *Collins*, 323 U.S. 516; *Communist Party* v. *S.A.C.B.*, *supra*, at 89.

In *Communist Party* v. *S.A.C.B.*, *supra*, the Court sustained a registration order issued under the Act against the Communist Party on a finding that it is a Communist-action organization. The Court considered the order to be an indirect or incidental restraint, rather than a direct prohibition, of the exercise of First

Amendment rights (at 90, 97). It therefore applied the balancing test and held that the First Amendment interests of the Party and its members were outweighed by the governmental interest in protecting the national security against the supposed menace of Communist objectives and methods (at 90-105).

Presumably, if the Court had thought that the registration order against the Communist Party constituted a direct, rather than incidental, restraint of First Amendment rights, it would have applied the clear and present danger test, as it did to a milder registration requirement in *Thomas* v. *Collins, supra,* at 530. And see *American Communications Assoc.* v. *Douds,* 339 U.S. 382, 396, 399; *Dennis* v. *United States,* 341 U.S. 494.

Whatever the case may be as regards the Communist Party, the order here is realistically a direct prohibition of association. The Act's provisions are far more severe than the disclosure requirements which failed the balancing test in *N.A.A.C.P.* v. *Alabama, supra,* and *Bates* v. *Little Rock, supra.* A registration order under the Act is an expression of governmental condemnation of the organization to which it is addressed and is accompanied by intolerable governmental sanctions against the organization and its members. It is conceivable that an organization committed to seeking fundamental change in the structure and control of our political system may survive the destructive effects of a registration order, since revolutionists must anticipate and be willing to meet their attempted suppression by the government they would supplant. But a cause organization like the American Committee intends to, and can, function only within the existing political structure. It cannot survive in the semi-legal

status of an organization ordered to register as a Communist front. Accordingly, a registration order against such an organization inevitably destroys the organization and thereby "directly" restrains association in it.

Moreover, whatever the situation may be as to the right of association, the registration order clearly imposes a direct restraint on the American Committee's exercise of the rights of speech, press and petition. In the *Communist Party* case, the Court held the contrary as to the Party, distinguishing *Thomas* v. *Collins, supra,* on the grounds that the "present statute does not, of course, attach the registration requirement to the incident of speech, but to the incidents of foreign domination and of operation to advance the objectives of the world Communist movement" (at 90). But here there was no evidence or finding of foreign domination of the American Committee, and the "operation" which evoked the registration order consisted of the organization's First Amendment activities in seeking changes in the laws and in defending aliens.[46]

Accordingly, the Board's order here should be judged by the clear and present danger test. This test is obviously not met. There was neither finding nor evidence of any dangerous advocacy or activity, and indeed it would be ludicrous to visualize any danger in the concededly "laudable" endeavors of the American Committee.

---

[46] Whatever may be the rule with regard to foreign agents, it is impossible to see how the identity of an organization's domestic controllers lends any more justification for a restraint of First Amendment rights than the identity of an individual speaker or writer.

2. If the Balancing Test Applies, It is not Satisfied.

The Act and the Board's order also fail the balancing test, if that is applicable. That test requires that the restraint on First Amendment interests be outweighed by a "compelling" governmental interest. *N.A.A.C.P.* v. *Alabama, supra,* at 463; *Bates* v. *Little Rock, supra,* at 524. It also requires a "substantial connection between the breadth of disclosure demanded and the purpose which disclosure was asserted to serve." *Communist Party* v. *S.A.C.B., supra,* at 93.

The *Communist Party* case held that the First Amendment interests of the Party and its members were outbalanced by "the exigencies of self-preservation and the values of liberty" (at 96), which required protection of the national security against what Congress could reasonably consider a dangerous, foreign-controlled conspiracy, seeking by illicit means to overthrow the government and substitute a totalitarian dictatorship under foreign domination (at 93-95). The Court expressly disclaimed, however, any possibility that the Act's registration requirements could constitutionally be applied to organizations which do not have such endangering characteristics (*at* 104).

This case obviously comes within the disclaimer. On one side of the balance, the First Amendment interests involved are substantial, and are important not only to the American Committee but also to the entire foreign-born community whose interests it protects. The government has no legitimate interest whatsoever, let alone a "compelling" one, in suppressing the American Committee's peaceful efforts to defend aliens and promote improvements in our immigration laws and policies. And since the American Committee engages in no other kind of activities, it does not infringe "the exigencies

of self-preservation and the values of liberty." To the contrary, those values are promoted by the American Committee.

Nor is there any, much less a substantial, connection between the destructive disclosure requirements which the Board's order visits on the American Committee and the asserted purpose of the Act to protect the nation from an imagined foreign-dominated insurrectionary conspiracy.

No governmental interest is supplied by the fact that a Communist-front organization is, by definition, substantially controlled by a Communist-action organization, meaning the Communist Party. The government lacks power to suppress the peaceable and "laudable" exercise of First Amendment rights by Communists, as well as by everybody else. *DeJonge* v. *Oregon,* 299 U.S. 353. Even statutes addressed to the advocacy of violence must be so limited as not to impair the "legitimate political expression or association" of Communists. *Scales* v. *United States,* 367 U.S. 203, 229. And even the House Committee which reported the bill recognized, as the court below did not, that legislation "cannot and should not be directed" against peaceable Communist activity. *Supra,* pp. 45-46.

It is of no consequence that a Communist-action organization is, by definition, substantially controlled by the Soviet Union. In the first place, that "control," as interpreted by the Court, is no more than a "disposition" to agree with the Soviet Union. *Communist Party* v. *S.A.C.B., supra,* at 39-40. Secondly, who controls the Communist Party is besides the point. For there is neither evidence nor finding that the Soviet Union controls, or even is aware of the existence of, the American Committee.

Nor can the Act's destructive requirements be justified as a measure to disclose to the public the "true nature" of the American Committee. There is no secret as to what the American Committee advocates or whom it defends. The public knows from the organization's literature and stated policies, as did the Board, that the American Committee defends Communist, as well as non-Communist, aliens and opposes political, as well as non-political, deportations and denaturalizations. The Board thought that the crucial issue was the motivation of the American Committee (*supra*, pp. 28-34). But since the First Amendment prevents the government from requiring disclosure of the identity of those who write or distribute handbills (*Talley* v. *California*, 362 U.S. 60), it assuredly prohibits the forced disclosure of the motives or political affiliations of writers and speakers.

B. The Act and the Board's Order Violate the First Amendment and Due Process Because the Control Component, as Construed by the Board and the Court Below, Is Vague

The American Committee has been subjected to onerous requirements not imposed on organizations generally. These requirements, as we have seen, also restrain rights of association, speech, press and petition. If the order which imposes this liability is based on a vague statutory standard, it violates both the First Amendment and due process. *Cramp* v. *Board of Public Instruction*, 368 U.S. 278; *Baggett* v. *Bullitt*, 377 U.S. 360.

By the construction of the Board and the majority below, the aid component of section 3(4), which is the standard for the imposition of registration liability, includes any activity that may benefit the Communist Party, no matter how collaterally or intangibly (*supra*,

pp. 28-37). In both *Cramp* and *Baggett*, the Court held state loyalty oaths invalid for vagueness because they failed to define and circumscribe such terms as "aid to the Communist Party." It follows that section 3(4), as here construed, has the same defect.

Cramp stated (at 286):

> "Those who take this oath must swear, rather, that they have not in the unending past ever knowingly lent their 'aid,' or 'support,' or 'advice,' or 'counsel' or 'influence' to the Communist Party. What do these phrases mean? . . . Could a lawyer who had ever represented the Communist Party or its members swear with either confidence or honesty that he had never knowingly lent his 'counsel' to the Party? Could a journalist who had ever defended the constitutional rights of the Communist Party conscientiously take an oath that he had never lent the Party his 'support'? Indeed, could anyone honestly subscribe to the oath who had ever supported any cause with contemporaneous knowledge that the Communist Party also supported it?
>
> "The very absurdity of these possibilities brings into focus the extraordinary ambiguity of the statutory language."

The "possibilities" that the Court considered absurd in *Cramp*, and which Mr. Justice Clark would have had the Court ignore as "ridiculous" speculations in *Baggett* (at 383), are of the same kind as, and no more far-fetched than, the actuality here—that legal defense of the foreign born has been held to constitute "aid and support" to the Communist Party. Accordingly, section 3(4) as here construed has the "extraordinary ambiguity" which *Cramp* condemns.

C. The Act and the Board's Order Violate Due Process Because the American Committee Was Bound by the Board's Finding, Made in the Proceeding Against the Communist Party, That the Communist Party is a Communist-Action Organization

The American Committee was found to be a Communist-front organization on the ground that it is controlled by, and is primarily operated for the purpose of aiding and supporting, the Communist Party. This finding corresponds to the section 3(4) definition of a Communist-front only if the Communist Party was a Communist-action organization, as defined by section 3(3), at the time of the finding against the American Committee.

No evidence was introduced at the hearing against the American Committee to establish that the Communist Party is or was a Communist-action organization. Instead, the Board (R. 16, ftn. 2) and the court below (R. 84) held that the American Committee was bound by the Board's determination, made in a prior proceeding against the Communist Party, that the latter organization was an action organization.

This preclusion of the American Committee by a finding made in a proceeding to which it was not a party violates the due process principle that a deprivation of liberty may not be accomplished without affording to the one deprived an opportunity to contest the factual premises on which the deprivation depends. *Noto* v. *United States*, 367 U.S. 290, 299; *Renaud* v. *Abbott*, 116 U.S. 277, 288. Cf. *Kirby* v. *United States*, 174 U.S. 47; *Cole* v. *Arkansas*, 333 U.S. 196, 201.

Moreover, the finding as to the Communist Party was of its nature on April 20, 1953, the date of the

order against it. Yet it precluded the American Committee as to the nature of the Party on June 27, 1960, the date of the Board's order against the American Committee. The constitutional validity of the order against the American Committee obviously depends, in the first place, on the Communist Party's having the characteristics of a Communist-action organization. By preventing the American Committee from showing that the Communist Party did not have such characteristics at the critical date,[47] the Act violates the principle that "the constitutionality of a statute predicated on the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." *United States* v. *Carolene Products Co.*, 304 U.S. 144, 153; *Chastleton Corp.* v. *Sinclair*, 264 U.S. 543; *Baker* v. *Carr*, 369 U.S. 186, 214. This denial of an opportunity to prove the contemporaneous facts was particularly serious because the Board's 1953 finding as to the Communist Party was itself based on "stale evidence" of Party activity prior to 1940. *Communist Party* v. *S.A.C.B.*, *supra*, at 134, n. 1 (dissenting opinion).

---

[47] Among the circumstances which have changed since the Board issued its order against the Communist Party is the recognition that the basic premise of the Act and the Board's 1953 findings—that the world Communist movement is a monolithic, Soviet-directed conspiracy to destroy all free governments—is what Senator Fulbright calls "the master myth of the cold war." 110 Cong. Rec. 6029 (daily pagination). Senator Humphrey recently wrote: "The 'monolithic unity' of the Communist bloc is an archaic myth to which no one even bothers to pay lip service any more." Wash. Evening Star, Sept. 3, 1964.

D. The Act Is Invalid Because It Conflicts With the Privilege Against Self-Incrimination

The validity of the Communist-front provisions of the Act presuppose and depend on the validity of the Communist-action provisions. If an organization cannot constitutionally be found to be a Communist-action organization, then by definition there can be no Communist-front organization.

In the *Communist Party* case, *supra,* at 105-10, a bare majority of the Court refused to determine, as premature, the Party's contention that the Communist-action provisions of the Act are invalid because they conflict with the privilege against self-incrimination of the Party's officers, since they require the officers to incriminate themselves without affording them an opportunity to assert their privilege not to do so. Cf. *Boyd* v. *United States,* 116 U.S. 616. We ask the Court to reconsider that holding, and to reverse it and hold the Act invalid for the reasons stated in the dissenting opinions of Justices Douglas and Brennan.

The subsequent course of the litigation against the Communist Party emphasizes the lack of realism in the prematurity holding in the *Communist Party* case. The Communist Party has not registered, and it now appears likely that the privilege of its officers constitutes an unsurmountable barrier against prosecution of the Party and its officers for failure to register. See *Communist Party* v. *United States,* 331 F.2d 897, 813, cert. den. 377 U.S. 968, *sub nom. United States* v. *Communist Party.* The primary purpose of the Act having been frustrated because of the collision between the Act and the constitutional privilege of the Party's officers, it is pointless to allow the Act to operate for the purpose of putting out of business organizations

other than the Communist Party—particularly when their offense consists of perpetrating good deeds in the pursuit of laudable objectives.

CONCLUSION

The judgment below should be reversed with directions to set aside the order of the Board.

Respectfully submitted,

JOSEPH FORER
DAVID REIN
FORER & REIN
711 14th St. N.W.
Washington 5, D. C.
Attorneys for Petitioner

APPENDIX

Statute Involved

Pertinent provisions of the Subversive Activities Control Act of 1950 (which is Title I of the Internal Security Act of 1950), as amended, 64 Stat. 987, 50 U.S.C. 781, et seq., are as follows. (The Act's section numbers are followed by the appropriate section numbers of 50 U.S.C. in brackets.)

Sec. 2 [781]. As a result of evidence adduced before various committees of the Senate and House of Representatives, the Congress hereby finds that—

(1) There exists a world Communist movement which, in its origins, its development, and its present practice, is a world-wide revolutionary movement whose purpose it is, by treachery, deceit, infiltration into other groups (governmental and otherwise), espionage, sabotage, terrorism, and any other means deemed necessary, to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

(2) The establishment of a totalitarian dictatorship in any country results in the suppression of all opposition to the party in power, the subordination of the rights of individuals to the state, the denial of fundamental rights and liberties which are characteristic of a representative form of government, such as freedom of speech, of the press, of assembly, and of religious worship, and results in the maintenance of control over the people through fear, terrorism, and brutality.

(3) The system of government known as a totalitarian dictatorship is characterized by the existence of a single political party, organized on a dictatorial basis, and by substantial identity between such party and its policies and the government and governmental policies of the country in which it exists.

(4) The direction and control of the world Communist movement is vested in and exercised by the Communist dictatorship of a foreign country.

(5) The Communist dictatorship of such foreign country, in exercising such direction and control and in furthering the purposes of the world Communist movement, establishes or causes the establishment of, and utilizes, in various countries, action organizations which are not free and independent organizations, but are sections of the world-wide Communist organization and are controlled, directed, and subject to the discipline of the Communist dictatorship of such foreign country.

(6) The Communist action organizations so established and utilized in various countries, acting under such control, direction, and discipline, endeavor to carry out the objectives of the world Communist movement by bringing about the overthrow of existing governments by any available means, including force if necessary, and setting up Communist totalitarian dictatorships which will be subservient to the most powerful existing Communist totalitarian dictatorship. Although such organizations usually designate themselves as political parties, they are in fact constituent elements of the world-wide Communist movement and promote the objectives of such movement by conspiratorial and coercive tactics, instead of through the democratic processes of a free elective system or through the freedom-preserving means employed by a political party which operates as an agency by which people govern themselves.

(7) In carrying on the activities referred to in paragraph (6) of this section, such Communist organizations in various countries are organized on a secret, conspiratorial basis and operate to a substantial extent through organizations, commonly known as "Communist fronts," which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. One result of this method

of operation is that such affiliated organizations are able to obtain financial and other support from persons who would not extend such support if they knew the true purposes of, and the actual nature of the control and influence exerted upon, such "Communist fronts."

(8) Due to the nature and scope of the world Communist movement, with the existence of affiliated constituent elements working toward common objectives in various countries of the world, travel of Communist members, representatives, and agents from country to country facilitates communication and is a prerequisite for the carrying on of activities to further the purposes of the Communist movement.

(9) In the United States those individuals who knowingly and wilfully participate in the world Communist movement, when they so participate, in effect repudiate their allegiance to the United States, and in effect transfer their allegiance to the foreign country in which is vested the direction and control of the world Communist movement.

(10) In pursuance of Communism's stated objectives, the most powerful existing Communist dictatorship has, by the methods referred to above, already caused the establishment in numerous foreign countries of Communist totalitarian dictatorships, and threatens to establish similar dictatorships in still other countries.

(11) The agents of Communism have devised clever and ruthless espionage and sabotage tactics which are carried out in many instances in form or manner successfully evasive of existing law.

(12) The Communist network in the United States is inspired and controlled in large part by foreign agents who are sent into the United States ostensibly as attaches of foreign legations, affiliates of international organizations, members of trading commissions, and in similar capacities, but who use their diplomatic or semi-diplomatic

status as a shield behind which to engage in activities prejudicial to the public security.

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

(14) One device for infiltration by Communists is by procuring naturalization for disloyal aliens who use their citizenship as a badge for admission into the fabric of our society.

(15) The Communist movement in the United States is an organization numbering thousands of adherents, rigidly and ruthlessly disciplined. Awaiting and seeking to advance a moment when the United States may be so far extended by foreign engagements, so far divided in counsel, or so far in industrial or financial straits, that overthrow of the Government of the United States by force and violence may seem possible of achievement, it seeks converts far and wide by an extensive system of schooling and indoctrination. Such preparations by Communist organizations in other countries have aided in supplanting existing governments. The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Sec. 3 [782]. For the purposes of this title—

* * * * *

(2) The term "organization" means an organization, corporation, company, partnership, association, trust, foundation, or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together for joint action on any subject or subjects.

(3) The term "Communist-action organization" means—

(a) any organization in the United States (other than a diplomatic representative or mission of a foreign government accredited as such by the Department of State) which (i) is substantially directed, dominated, or controlled by the foreign government or foreign organization controlling the world Communist movement referred to in section 2 of this title, and (ii) operates primarily to advance the objectives of such world Communist movement as referred to in section 2 of this title; and

(b) any section, branch, fraction, or cell of any organization defined in subparagraph (a) of this paragraph which has not complied with the registration requirements of this title.

(4) The term "Communist-front organization" means any organization in the United States (other than a Communist-action organization as defined in paragraph (3) of this section) which (A) is substantially directed, dominated, or controlled by a Communist-action organization, and (B) is primarily operated for the purpose of giving aid and support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title.

(4A) The term "Communist-infiltrated organization" means any organization in the United States (other than a Communist-action organization or a Communist-front organization) which (A) is substantially directed, dominated, or controlled by an individual or individuals who are, or

who within three years have been actively engaged in, giving aid or support to a Communist-action organization, a Communist foreign government, or the world Communist movement referred to in section 2 of this title, and (B) is serving, or within three years has served, as a means for (i) the giving of aid or support to any such organization, government, or movement, or (ii) the impairment of the military strength of the United States or its industrial capacity to furnish logistical or other material support required by its Armed Forces. . . .

(5) The term "Communist organization" means any Communist-action organization, Communist-front organization, or Communist-infiltrated organization.

• • • • •

Sec. 5 [784]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title, is registered or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful—

(1) For any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(A) in seeking, accepting, or holding any nonelective office or employment under the United States, to conceal or fail to disclose the fact that he is a member of such organization; or

(B) to hold any nonelective office or employment under the United States; or

(C) in seeking, accepting, or holding employment in any defense facility, to conceal or fail to disclose the fact that he is a member of such organization; or

(D) if such organization is a Communist-action organization, to engage in any employment in any defense facility; or

(E) to hold office or employment with any labor organization, as that term is defined in section 2(5) of the National Labor Relations Act, as amended (29 U.S.C. 152), or to represent any employer in any matter or proceeding arising or pending under the Act.

(2) For any officer or employee of the United States or of any defense facility with knowledge or notice that such organization is so registered or that such order has become final—

(A) to contribute funds or services to such organization;

* * * * *

(b) The Secretary of Defense is authorized and directed to designate and proclaim, and from time to time revise, a list of facilities, as defined in paragraph (7) of section 3 of this title, with respect to the operation of which he finds and determines that the security of the United States requires the application of the provisions of subsection (a) of this section. The Secretary shall promptly notify the management of any facility so listed; whereupon such management shall immediately post conspicuously, and thereafter while so listed keep posted, notice of such designation in such form and in such place or places as to give reasonable notice thereof to all employees of, and to all applicants for employment, in such facility. Such posting shall be sufficient to give notice of such designation to any person subject thereto or affected thereby . . .

Sec. 6 [785]. (a) When a Communist organization as defined in paragraph (5) of section 3 of this title is registered, or there is in effect a final order of the Board requiring such organization to register, it shall be unlawful for any member of such organization, with knowledge or notice that such organization is so registered or that such order has become final—

(1) to make application for a passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or

(2) to use or attempt to use any such passport.

* * * * *

Sec. 7. [786].

* * * * *

(b) Each Communist-front organization (including any organization required, by a final order of the Board, to register as a Communist-front organization) shall, within the time specified in subsection (c) of this section, register with the Attorney General, on a form prescribed by him by regulations, as a Communist-front organization.

* * * * *

(d) The registration made under subsection (a) or (b) shall be accompanied by a registration statement, to be prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the following information:

(1) The name of the organization and the address of its principal office.

(2) The name and the last-known address of each individual who is at the time of filing of such registration statement, and of each individual who was at any time during the period of twelve full calendar months next preceding the filing of such statement, an officer of the organization, with the designation or title of the office so held, and with a brief statement of the duties and functions of such individual as such officer.

(3) An accounting, in such form and detail as the Attorney General shall by regulations prescribe, of all moneys received and expended (including the sources from which received and the purposes for which expended) by the organization during the period of twelve full

calendar months next preceding the filing of such statement.

* * * * *

(5) In the case of any officer or member whose name is required to be shown in such statement, and who uses or has used or who is or has been known by more than one name, each name which such officer or member uses or has used or by which he is known or has been known.

(6) A listing, in such form and detail as the Attorney General shall by regulation prescribe, of all printing presses and machines including but not limited to rotary presses, flatbed cylinder presses, platen presses, lithographs, offsets, photo-offsets, mimeograph machines, multigraph machines, multilith machines, duplicating machines, ditto machines, linotype machines, intertype machines, monotype machines, and all other types of printing presses, typesetting machines or any mechanical devices used or intended to be used, or capable of being used to produce or publish printed matter or material, which are in the possession, custody, ownership, or control of the Communist-action or Communist-front organization or its officers, members, affiliates, associates, group, or groups in which the Communist-action or Communist-front organization, its officers or members have an interest.

(e) It shall be the duty of each organization registered under this section to file with the Attorney General on or before February 1 of the year following the year in which it registers, and on or before February 1 of each succeeding year, an annual report, prepared and filed in such manner and form as the Attorney General shall by regulations prescribe, containing the same information which by subsection (d) is required to be included in a registration statement, except that the information required with respect to the twelve-month period referred to in paragraph (2), (3), or (4) of such subsection shall, in such annual report, be given with respect to the calendar year

preceding the February 1 on or before which such annual report must be filed.

(f) (1) It shall be the duty of each organization registered under this section to keep, in such manner and form as the Attorney General shall by regulations prescribe, accurate records and accounts of money received and expended (including the sources from which received and purposes for which expended) by such organization.

* * * * *

Sec. 9 [788]. (a) The Attorney General shall keep and maintain separately in the Department of Justice—

* * * * *

(2) a "Register of Communist-Front Organizations", which shall include (A) the names and addresses of all Communist-front organizations registered under section 7, and (B) the registration statements and annual reports filed by such organizations thereunder.

(b) Such registers shall be kept and maintained in such manner as to be open for public inspection . . .

* * * * *

Sec. 10 [789]. It shall be unlawful for any organization which is registered under section 7, or for any organization with respect to which there is in effect a final order of the Board requiring it to register under section 7, or determining that it is a Communist-infiltrated organization, or for any person acting for or on behalf of any such organization—

(1) to transmit or cause to be transmitted, through the United States mails or by any means or instrumentality of interstate or foreign commerce, any publication which is intended to be, or which it is reasonable to believe is intended to be, circulated or disseminated among two or more persons, unless such publication, and any envelope, wrapper, or other container in which it is mailed or other-

wise circulated or transmitted, bears the following, printed in such manner as may be provided in regulations prescribed by the Attorney General, with the name or the organization appearing in lieu of the blank: "Disseminated by ....., a Communist organization"; or

(2) to broadcast or cause to be broadcast any matter over any radio or television station in the United States, unless such matter is preceded by the following statement, with the name of the organization being stated in place of the blank: "The following program is sponsored by ....., a Communist organization."

Sec. 11 [790]. (a) Notwithstanding any other provisions of law, no deduction for Federal income-tax purposes shall be allowed in the case of a contribution to or for the use of any organization if at the time of the making of such contribution (1) such organization is registered under sections 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

(b) No organization shall be entitled to exemption from Federal income tax, under section 101 of the Internal Revenue Code, for any taxable year if at any time during such taxable year (1) such organization is registered under section 7, or (2) there is in effect a final order of the Board requiring such organization to register under section 7 or determining that it is a Communist-infiltrated organization.

* * * * *

Sec. 13 [792]. (a) Whenever the Attorney General shall have reason to believe that any organization which has not registered under subsection (a) or subsection (b) of section 7 of this title is in fact an organization of a kind required to be registered under such subsection, or that any individual who has not registered under section 8 of this title is in fact required to register under such section,

he shall file with the Board and serve upon such organization or individual a petition for an order requiring such organization or individual to register pursuant to such subsection or section, as the case may be. Each such petition shall be verified under oath, and shall contain a statement of the facts upon which the Attorney General relies in support of his prayer for the issuance of such order.

* * * * *

(f) In determining whether any organization is a "Communist-front organization", the Board shall take into consideration—

(1) the extent to which persons who are active in its management, direction, or supervision, whether or not holding office therein, are active in the management, direction, or supervision of, or as representatives of, any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(2) the extent to which its support, financial or otherwise, is derived from any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(3) the extent to which its funds, resources, or personnel are used to further or promote the objectives of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2; and

(4) the extent to which the positions taken or advanced by it from time to time on matters of policy do not deviate from those of any Communist-action organization, Communist foreign government, or the world Communist movement referred to in section 2.

(g) If, after hearing upon a petition filed under subsection (a) of this section, the Board determines—

(1) that an organization is a Communist-action organization or a Communist-front organization, as the case may be, it shall make a report in writing in which it shall state its findings as to the fact and shall issue and cause to be served on such organization an order requiring such organization to register as such under section 7 of this title; . . .

* * * * *

Sec. 14 [793]. (a) The party aggrieved by any order entered by the Board under subsections (g), (h), (i), or (j) of section 13, or subsection (f) of section 13A, may obtain a review of such order by filing in the United States Court of Appeals for the District of Columbia, within sixty days from the date of service upon it of such order, a written petition praying that the order of the Board be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have jurisdiction of the proceeding and shall have power to affirm or set aside the order of the Board; but the court may in its discretion and upon its own motion transfer any action so commenced to the United States Court of Appeals for the circuit wherein the petitioner resides. The findings of the Board as to the facts, if supported by the preponderance of the evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material, the court may order such additional evidence to be taken before the Board and to be adduced upon the proceeding in such manner and upon such terms and conditions as to the court may seem proper. The Board may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by the preponderance of the evidence shall be conclusive, and its

recommendations, if any, with respect to action in the matter under consideration. . . .

* * * * *

Sec. 15 [784] (a) If there is in effect with respect to any organization or individual a final order of the Board requiring registration under section 7 or section 8 of this title—

(1) such organization shall, upon conviction of failure to register, to file any registration statement or annual report, or to keep records as required by section 7, be punished for each such offense by a fine of not more than $10,000, and

(2) each individual having a duty under subsection (h) of section 7 to register or to file any registration statement or annual report on behalf of such organization, and each individual having a duty to register under section 8, shall, upon conviction of failure to so register or to file any such registration statement or annual report, be punished for each such offense by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

For the purposes of this subsection, each day of failure to register, whether on the part of the organization or any individual, shall constitute a separate offense.

(b) Any individual who, in a registration statement or annual report filed under section 7 or section 8, willfully makes any false statement or willfully omits to state any fact which is required to be stated, or which is necessary to make the statement made or information given not misleading, shall upon conviction thereof be punished for each such offense by a fine of not more than $10,000, or by imprisonment for not more than five years, or by both such fine and imprisonment. For the purposes of this subsection—

(1) each false statement wilfully made, and each wilful omission to state any fact which is required to be stated, or which is necessary to make the statements made or information given not misleading, shall constitute a separate offense; and

(2) each listing of the name or address of any one individual shall be deemed to be a separate statement.

(c) Any organization which violates any provision of section 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000. Any individual who violates any provision of sections 5, 6, or 10 of this title shall, upon conviction thereof, be punished for each such violation by a fine of not more than $10,000 or by imprisonment for not more than five years, or by both such fine and imprisonment.

Sec. 16 [795]. Nothing in this title shall be held to make the provisions of the Administrative Procedure Act inapplicable to the exercise of functions, or the conduct of proceedings, by the Board under this title.